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OBSTACLES TO EXPORTING FACED BY SMALL BUSINESSES

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

OBSTACLES TO EXPORTING FACED BY SMALL BUSINESSES

FEBRUARY 11, 1983

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OBSTACLES TO EXPORTING FACED BY SMALL BUSINESSES

FRIDAY, FEBRUARY 11, 1983

U.S. SENATE
COMMITTEE ON SMALL BUSINESS,
Seattle, Wash.

The committee met, pursuant to notice, at 2 p.m., in the North Auditorium of the New Federal Building, fourth floor, 915 Second Street, Seattle, Wash., Hon. Slade Gorton (acting chairman of the committee) presiding.

Present: Senator Gorton.

Also present: Creigh Hilen Agnew, legislative assistant to Senator Gorton, and Anne Sullivan, professional staff member.

STATEMENT OF HON. SLADE GORTON, A U.S. SENATOR FROM THE STATE OF WASHINGTON, AND ACTING CHAIRMAN, COMMITTEE ON SMALL BUSINESS

Senator GORTON [acting chairman]. We will get this meeting started on time with a brief statement and then the first of two panels.

Exporting means jobs. The Department of Commerce reports that every $1 billion in exports represents about 31,000 jobs. In 1980, 1 in every 7 industrial jobs in this country depended on exporting, and one-third of this Nation's agricultural production was going abroad.

Businesses in Washington State are in an excellent position geographically to pursue and successfully to exploit international markets, and the evidence indicates that they are doing so. One-fourth of the manufacturing jobs in this State are export related, and across all sectors exporting is responsible for 20 percent of this State's employment.

Despite these statistics, however, we have not yet realized our full potential for exporting. The Commerce Department tells us that there are at least 20,000 small firms in this country which have the potential to competitively and profitably market their products overseas but that they are not doing so.

As one of its priorities, the Small Business Committee is attempting to identify and to remove the obstacles which inhibit exporting by small businesses. The committee started this process by surveying nearly 1,300 small firms, both exporters and nonexporters, to ascertain the exporting obstacles they encountered and to elicit their suggestions for Government actions which will encourage exporting by the small business sector. The results of this survey, published last August, and the record from hearings such as this one will serve to inform the members of this committee about what the Congress should be doing to increase U.S. exports of goods and services.

Developing a strong export sector has been a priority of both the 96th and 97th Congresses. In 1980, at the urging of this committee, Congress enacted the Small Business Export Expansion Act. This legislation authorized matching grants to small businesses to establish small business export development programs. It established an export revolving line of credit loan guarantee program in the Small Business Administration to provide pre-export financial assistance to small businesses, and it mandated the placement of export development specialists in each one of the SBA's regional offices.

In addition, since I joined the Senate in January 1981, Congress has removed obstacles to exporting caused by our tax laws relating to foreign earned income, and the Senate has passed legislation to simplify and clarify the Foreign Corrupt Practices Act.

Most recently, legislation to facilitate and encourage the formation of export trading companies and associations has become law. It is believed that this legislation will lead to exporting by a greater number of small and medium-sized firms, resulting in the creation of 300,000 to 600,000 new jobs by 1985.

Within this context, the Export Administration Act comes before the Congress this session for reauthorization. As it now stands, this act authorizes the President to impose controls on exports for reasons of national security, foreign policy, and short supply. The act raises many issues of national concern. The one that I am interested in hearing about today is how the businesses of our State have faired under the existing act. I know that there have been problems, so I would like to hear about them and any suggested solutions that the Congress should consider in its deliberations over reauthorization.

With all of this as background, I look forward to hearing the testimony of today's witnesses on the obstacles they have encountered in developing export programs in their businesses and to hearing any suggestions for action by Congress to remove those obstacles.

Our first panel is Mr. Fluke, Mr. Wheeler, Mr. Bird, Mr. Gellert, and Mr. Simon. I see four of those people here. Are we missing one?

In any event, John, you are first on the list. We will be happy to start with you.

STATEMENT OF JOHN M. FLUKE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, JOHN FLUKE MANUFACTURING CO., EVERETT, WASH.

Mr. **Fluke**. Thank you, Senator. I look forward to the opportunity to present this testimony.

I might add, also, that the requirement that we submit 25 copies of the testimony I'm about to give has been done and they are in your people's hands.

Senator **Gorton**. Thank you.

Mr. **Fluke**. Just in the way of introduction, there are about eight pages which I will read to you. There is a number of documents behind this which I shall not read. I will start reading that now, if I may.

My name is John Fluke. I am chairman and chief executive officer of the John Fluke Manufacturing Co. We build electronic test and measurement instruments. Our fiscal year 1982 sales were $154 million. I am also chairman of the Washington State District Export Council.

Today I want to talk to you about the subject of export controls. This process is very important to our company as more than 35 percent of our business is done overseas.

There has been much discussion of how the strength of the U.S. dollar on foreign exchange markets has adversely affected U.S. exporters. Our meeting here today can do little to change the value of the dollar on world markets. However, this committee can work to save exporters millions of dollars in expenses and gain us millions of dollars in sales, by simplifying export licensing procedures, by eliminating the need for many licenses, and by expediting the license review process.

During the past year, the John Fluke Manufacturing Co. has incurred excessive direct and indirect costs because of lengthy delays awaiting the issuance of export licenses. The present "system" is under such a mountain of paper and red tape that it is barely functioning.

The export licensing process for the People's Republic of China is especially annoying—as an example of some of the difficulties we run into—because the U.S. Government's public policy is to encourage trade with China and to restrict relatively few items.

It is the Fluke Co.'s experience that few license applications for China are denied; yet, all are subject to months of bureaucratic review and red tape. Included as part of my written testimony is a case history of one export license application for China that took nearly a year to be approved.

This case is a good example of all that is wrong with the export licensing process. This license covered an agreement under which a Chinese organization would assemble a Fluke instrument under our supervision. This contract, valued at over $1 million, was signed in September 1981 and required substantial planning and expenditures by the Fluke Co. However, it was November 1982 before the export license was approved. The cost of financing the project for this 14-month period easily exceeded $100,000 and the majority of this expense is directly attributable to export licensing delays. These delays were not only very expensive but seriously strained our commercial relationship with the Chinese.

Export licensing procedures for the People's Republic of China must be improved if U.S. companies are to successfully compete against the Europeans and Japanese in that market. Specifically, we recommend:

One, the People's Republic of China should be treated as a free world country as is Yugoslavia in the export licensing process. Currently, license applications for China are subject to the same protracted review process that East bloc applications go through.

Two, for individual validated export license applications for China, the Commerce Department should be given greater delegation of authority. Every application need not be reviewed by a number of other agencies in Washington, D.C. Fewer applications should be sent to COCOM. Once COCOM has approved an application for a particular instrument, subsequent applications should not be sent there again. Review by COCOM, which appears to be no more than a rubberstamp organization, adds at least another 60 days' processing time to an application.

If the licensing situation for China does not improve soon, U.S. companies will continue to lose ground to European and Japanese competitors. We continue to read about how the administration wants to expand trade with the People's Republic of China. However, China's Foreign Minister Huang Hua recently summed up very well the U.S. Government's export licensing policy toward his country by saying, "Loud thunder, but little rain."

Another serious disincentive to exporters are U.S. unilateral export controls. Included as part of my written testimony is another case history about an export license application for a circuit board tester for export to Bulgaria. This license was denied after several months of "review" because of a U.S. unilateral export control. The end result was that the Fluke Co. lost a $106,000 contract to an Italian company because their Government does not enforce a similar export regulation.

We are already having enough trouble remaining competitive with European and Japanese companies because of the strength of the dollar. We don't need our own Government working against us as well.

U.S. unilateral export controls of electronic instruments should be eliminated when there is equivalent foreign competition.

A third example is this: One of the most serious failings of the current export licensing system is the almost complete disregard of "foreign availability." The Export Administration Act directs the Department of Commerce in reviewing export license applications to take into consideration the availability of comparable foreign products. Export license applications are supposed to be approved if equivalent products are available from foreign suppliers.

The case history I just cited in discussing unilateral export controls is a perfect example of the disregard of "foreign availability." During the review of this license, the Departments of Commerce and Defense were informed several times that if the license was denied the current contract would go to an Italian company. However, these agencies showed no concern about the lost business and eventually denied the application.

The export licensing bureaucracy in Washington, D.C., must stop working in a vacuum. The U.S. electronics industry now has very serious competition in Europe and Asia and no longer monopolizes many technologies. Increasingly, an export license denial means the order will be filled by a European or Japanese competitor.

I strongly urge you to enact legislation forcing the Commerce Department to seriously consider "foreign availability" in the export licensing process.

Still another example of difficulty is this: The commodity control list as it is now written restricts far too many microprocessor-based instruments. We are now required to apply for export licenses for many instruments that have a dedicated civilian purpose simply because they contain a microprocessor.

Also, the commodity control list is written in extremely vague and convoluted language few can understand. Our technical people almost need to be trained as lawyers in order to sort their way through all the "howevers, exceptions, and footnotes."

These regulations are also putting us at a competitive disadvantage. We have learned that European governments interpret the commodity control list much differently than does our Commerce Department. For example, the British Government interprets an entry relating to microprocessor-based instruments much more liberally than does the Commerce Department. As a result, a data-logger manufactured by one of our British competitors has been classified as a nonrestricted item. This data-logger is equivalent in its capabilities to a new Fluke data-logger. As it now stands, our British competitor has been able to freely export to the East bloc and China whereas we will be waiting months for license applications to slowly grind their way through the bureaucracy.

A commodity control list written in plain English would solve many of these interpretation problems.

Another problem is Project Exodus. Over a year ago, the U.S. Customs Service and the Commerce Department began a program called Project Exodus, an effort to prevent the illegal export of high technology equipment. I might add parenthetically we fully agree with this, but it's the method of operation that is annoying to us.

We recognize that this effort is necessary to prevent the loss of our technological edge, especially in military-related areas. However, Project Exodus as it is now administered is seriously restricting ethical companies from exporting noncritical technologies. This program assumes that a company is guilty of violating the export laws until proven innocent. That is, if the company can ever find out which regulation they supposedly violated. The main problems with Project Exodus are:

One, manpower. The Customs Service has assigned many new inspectors to major airports to catch illegal shipments. However, there is not one inspector with technical expertise on the West coast, now the center of high technology industry. As a result, these inspectors often hold up the shipment of products that clearly do not require validated export licenses. Furthermore, the Department of Commerce has not added staff to deal with the large increase in their workload caused by Exodus, so the exporter's shipment ends up needlessly being detained for several months, a very costly situation.

Two, lack of an effective and timely appeal process. There is no procedure allowing a company to quickly resolve questions about a detained product's classification. It now literally takes weeks just to find out which specific entry of the commodity control list was supposedly violated. Even after ferreting out the CCL classification as well as identifying the licensing officer responsible for making the final determination, one then faces an imprecise and often capricious determination procedure.

As an example, we have had products previously classified, in writing, by one licensing officer as general destination items now reclassified by another licensing officer as restricted items following a detainment by Customs. These changes in determination resulting from personal interpretations of the regulations make any planning for export almost an irrational process.

In summary, U.S. exporters already have their hands full dealing with a worldwide recession and the overvalued dollar. We do not need any more disincentives to exporting, particularly from our own Government. Your recommendations to Congress to simplify export licensing procedures and to eliminate the need for many license applications will greatly assist U.S. exporters in remaining competitive overseas.

Senator, that concludes my remarks. As I said, I will submit this for the record.

Senator GORTON. Thank you. Your entire statement will be included in the record following your oral presentation.

I intend to listen to the opening statement of each of you, and then we will have questions.

Mr. FLUKE. I would like to say one more thing, if I may have just one more sentence.

I think as we stand at the threshold from the vantage point of 1990 and look back on this decade, we will have seen whether we have been successful in retaining a position in world trade or not, and I think one of our main competitors will be the Japanese. They are clever and they are hard-working, and they have good products. They know how to get business.

Right now we are behind the eight ball a bit by the upper evaluation of the dollar, which has resulted in a price increase of 30 to 40 percent. This sets the stage for a foreign customer to look elsewhere, or the price differential may be enough to encourage them to do it themselves. Then those markets will be gone forever. I think that will be a large consideration, and we will see whether or not it materializes in just a short 8 years ahead, Senator. That worries me a little bit. It worries me corporately and it worries me nationally. That's another 2 cents' worth.

Thank you, Senator.

Senator GORTON. Thank you.

Mr. Wheeler?

STATEMENT OF WILLIAM A. WHEELER, CHIEF EXECUTIVE OFFICER, DECOTO AIRCRAFT, INC., YAKIMA, WASH.

Mr. WHEELER. Thank you.

I, too, have given my 25 copies of the written statement to your staff.

I appreciate the opportunity to be here.

I am the president and chief executive officer of Decoto Aircraft in Yakima, Wash. We are a $10-million-a-year business primarily involved in the aerospace field.

Seldom does someone with a small, specialized business have the opportunity to address such a group with the ability to be specific regarding problems of doing business in a global sense.

Decoto Aircraft designs and manufactures hydraulic actuators and controls for the aircraft and aerospace industry.

The concerns amplified in my written statement fall generally within three areas:

First, we have competitors from foreign countries taking business from us in the United States. These companies are often subsidized by their own government, generally by receiving financial support in the area of nonrecurring costs, development, et cetera. Our Export Administration Act tends to look at restrictions to our exporting rather than any controls on imports from foreign companies.

Two, when we have had opportunities to export, we find that competitors in foreign countries often have subsidies to enable them to keep our products out. An example of this is in the licensing of the Japanese Defense Agency to buy and then build the Bell Helicopter AH1S Cobra. We have a proprietary product patented in the United States on this ship. The Japanese Government will pay up to 150 percent of the price we quote to enable a Japanese company to develop a competitive item. Nowhere is there such consideration given to a small U.S. company.

Three, in a larger sense where Boeing, Lockheed, Douglas, and so forth, are competing in the world market, Airbus Industries has emerged as a subsidized competitor.

Decoto Aircraft has exports related to commercial aircraft sales of about 36 percent of our total sales. This 36 percent is made up of direct spares sales to foreign airlines and having equipment on new commercial aircraft. The Boeing Co., for example, our largest customer, exports 60 percent of their production, and our equipment is exported with the planes. This, then, is the basis for future spare sales.

This 36 percent of total sales in exports translates into 60 of our 167 employees, or a large economic influence to Decoto Aircraft and Yakima, Wash.

Airbus Industries is subsidized in many ways by the three major countries that own it. One area where we must counter the foreign governmental intervention relates to the Export-Import Bank. We must establish policies that will permit quick, competitive financing to foreign airline customers fully competitive with terms of the lenders for Airbus. The competitive elements—price, quality, and serviceability—should be the basis of decision by a foreign airline whether to buy from Airbus or a U.S. manufacturer, not the financing terms that are artificially provided.

An example of foreign government financing hurting a U.S. manufacturer, not even in a foreign country but right in our own country, is the case of the Metropolitan Transportation Authority of New York City buying $622 million of subway cars from a Canadian company rather than Philadelphia's Budd Co. plant. By the way, that is the largest purchase ever of subway cars in history.

The subsidy financing at 9.7 percent interest, below the commercial rates, amounted to more than $100,000 per car on 825 cars, or over $82.5 million of subsidy.

Our export-import policies should not allow such advantages to be given foreign suppliers at the expense of our own industries.

I see that world economy has changed significantly from a few years ago. If we want to sanction a foreign government, let's get our allies to agree to boycott to make the sanction work, rather than restrict our own industries while enabling competing countries to fill the need.

For example, if Boeing cannot sell 737's to Libya, Libya buys F-28's from the Dutch. If they cannot sell 767's, the Libyans will buy the Airbus A-310's. I fail to see that such a sanction is in the best interest of the United States.

We at Decoto Aircraft are not alone in the Yakima Valley in having difficulties concerning exporting. The agricultural industry, far and away our largest area of the economy, has many barriers to exporting, some similar to ours, some different. They have testified previously before your committee, so you are aware.

It is imperative that these problems be addressed when the Export Administration Act is reauthorized this fall.

In closing, I appreciate the opportunity to participate in this hearing, to know the Senate cares, and to hear other points of view.

Thank you.

Senator GORTON. Thank you.

Mr. Bird?

STATEMENT OF HARLEY W. BIRD, PRESIDENT, SPHERE SOLID WASTE, INC., ACCOMPANIED BY RANDOLPH CARTER, VICE PRESIDENT

Mr. BIRD. Yes, Senator.

My name is Harley Bird. I am president and chief executive officer of Sphere Solid Waste, Inc. We are currently involved in the manufacture and design of small water purification units. We are also involved in various services associated with solid waste management and food processing.

We are pleased to be asked to testify on the obstacles faced by small businesses in export trade. As you know, fewer than 15 percent of all American businesses have substantial export activities.

International trade stimulates the economy, extends the shelf life of consumer industrial goods up to 10 years on the average. For the United States, exports especially to oil-producing countries, significant exporting helps to reverse trade deficits. Primarily, Fortune 500 companies are responsible for the vast majority of U.S. export activity. However, our experience has shown that there are substantial benefits to the small business in the world of international activity.

We will limit our testimony to the barriers to trading in foreign countries, as the above has been well documented and motivated this hearing.

The three primary barriers to small business activity in foreign markets are:

One, information. The timely and relevant access to information regarding trade opportunities and trends in foreign markets.

Two, finance. Availability of credits to finance expansion into foreign markets and credits to finance the sale of goods in those markets. Also, financing for bonds required by foreign governments.

Three, promotion. Aggressive placement of U.S. goods/services in the marketplace and motivation of U.S. companies to participate in those markets.

The obvious question arises with respect to the Government's role in reducing these obstacles and stimulating foreign trade by small businesses.

Again, calling upon our experience, we have found the Government and private sector to possess all the necessary tools to address the problems and overcome them jointly.

Communicating trade opportunities to small businesses, informing them of ready business opportunities, is the No. 1 priority. There appears to be a number of well-structured agencies all generating the basic information gathered through consulates, embassies, AID field officers, and regional agriculture stations.

Our recommendation is that a single small business liaison collect and coordinate data from all of these agencies to a central program. This program would widely disseminate and promote trade opportunities to small businesses.

Another valuable service of trade leads, contracts, or trends would be large U.S. firms currently involved in foreign trade. In many cases, these large firms have needs which can be filled by small U.S. firms. Particularly when involved in work supported by direct U.S. funding, there should be a small business participation goal. U.S. Fortune 500 firms can also plug into this information network with ideas, leads, et cetera.

In many cases, an idea of the trend a nation is heading in or world development trends can assist a small business to gear up to promote his products into that development market. Sources of information could range from Departments of Defense, Commerce, Agriculture, and State.

Financing exports present a barrier to foreign market development to no less a degree than does the lack of market information. To mention just a few needs in this area: *(a)* Export investigation and foreign market intelligence gathering; *(b)* lines of credit for exporting; *(c)* loan guarantees; *(d)* client financing; and *(e)* bond financing.

An aggressive marriage of government and industry has proven successful over the past 50 years in aerospace, military, and construction. These projects often involve the spending of millions on the promotion of successful trade.

A small business may not be equipped or motivated to enter a foreign market and risk a loss of dollars or man-hours in unfamiliar cultures or business procedures. Here the Government can be an indispensable tool—Government trade shows and other promotional activities that place U.S. goods and business people in the foreign market arena with traditional partners. Also, Government can arrange for trade tours of foreign government officials and businessmen across the United States to regional gatherings of interested small business people.

When appropriate, Government officials can encourage purchase of U.S. goods as a means of foreign assistance. Such activities in agriculture have proven very successful.

We believe that gearing up every appropriate branch of government and government officials to promote U.S. products and services in the foreign sector is a priority.

In conclusion, we would like to acknowledge the help we have received from employees of a variety of agencies and embassy and consultate officials. Small business is big business for America, and exporting is becoming increasingly important to maintain the viability and longevity of American small business.

Senator GORTON. Thank you.

Mr. Gellert?

STATEMENT OF MAX GELLERT, PRESIDENT, ELDEC CORP., LYNNWOOD, WASH.

Mr. GELLERT. Thank you, Senator Gorton.

Good afternoon. My name is Max Gellert. I am president and chief executive officer of the Eldec Corp. Eldec is a designer and manufacturer of precision electronic and mechanical equipment for the aerospace and marine industries. We expect our sales this fiscal year to be in the range of $60 million. The jobs of 485 of our 1,155 employees in the Seattle area are directly related to our export business.

The present administration of export regulations is slow, expensive, and cumbersome for companies like Eldec. Satisfaction of these regulations increases our cost of doing business, reduces our competitiveness in international markets which reduces our ability to grow, earn profits, pay taxes, and expand our employment base.

A favorable balance of trade is needed by the United States to maintain a strong and healthy economy. When the Federal Government exercises control over exports to implement foreign policy, it may have an adverse effect on exports. In many instances the control of exports may have negative effects on a particular industry and/or particular companies. Therefore, it appears reasonable to expect an environment of Government and industry participation and cooperation for the creation and administration of export and import controls. We recommend the Federal Government undertake four fundamental changes to legislation governing the control of exports, some of which are within the Export Administration Act.

First, we would urge amending the Export Administration Act to eliminate the use of export controls on nonmilitary material and information as a means of implementing foreign policy. There is no evidence of success in the use of export controls with respect to foreign policy. The Soviet grain embargo and the Soviet oil pipeline equipment embargo are good examples of the failures of export controls to change the method of behavior of other nations.

Supporting foreign policy through export controls places intolerable burdens on U.S. firms that compete in foreign markets. Such controls place U.S. companies in the position of being inconsistent, unreliable, suppliers to our overseas customers. The uncertainty of the availability of export licenses, the uncertainty of competitive export financing, and the uncertainty of re-export authorization all contribute to this image of inconsistency and unreliability.

Firms which are successful in the export market depend on positive, long-term customer relationships. The aerospace industry, with which I am most familiar, has historically maintained one of the most favorable balances of exports over imports of any U.S. industry. The sale of commercial aircraft is particularly influenced by long-term customer relationships. More than half of the commercial airliners built in the United States are sold to customers outside the United States. The sale of aircraft in international markets provides many jobs at Eldec for the manufacturing of equipment for the aircraft and additional jobs to build spare parts over the 20-to-25-year average life of such aircraft. This favorable trade balance is in some jeopardy due to our foreign image.

Second, we recommend amending the Export Administration Act by deleting re-export controls. There simply is no practical way to control the movement of aircraft parts that are sold, leased, or borrowed among the world's airlines. Re-export controls are, at best, difficult to police and enforce, may cause delays in the sale of U.S. products, are unique to U.S. goods, and an expense to U.S. firms or firms dealing in U.S. goods. Most parts found on commercial airliners are freely available in international markets from non-U.S. sources. Re-export controls are, therefore, ineffective, as there is foreign availability of most of this equipment.

Third, we should clarify the definition of "munitions" in the International Traffic in Arms Regulations. The U.S. State Department is responsible for licensing and controling the export of munitions. The present definition expressed by the State Department regulations of a munition is an item which "is manufactured to military specifications (mil-specs)." This definition, if applied literally, could include nuts, bolts, washers, et cetera.

It is ridiculous that we should go through the administrative process of filing license applications, receiving license applications, and maintaining files for all items containing parts built to military specifications. Therefore, a product built for a commercial aircraft which contains parts which meet military specifications could be construed to be a munition per the State Department definition.

We have been unable to obtain a usable definition from the State Department, even though some of the State Department officials agree their present definition is not very workable. With the help of our counsel, we have developed a clearer definition which we would propose. It is "those pieces of hardware which are designed or built specifically to military specifications to be used on a military vehicle."

Fourth, we recommend amending the Export Administration Act to establish a single Government agency to grant export licenses and to resolve international tangles. At present, the following six Government departments have export regulations and controls: the Department of State, the Department of Commerce, the Department of Treasury, the Department of Interior, the Department of Energy, and the Department of Justice.

These regulations are difficult to understand, poorly or at least slowly communicated, and often represent conflicts. The administration of export regulations is slow, expensive, and cumbersome. It has been our experience that Government agencies are not prepared to be responsive to the information needs of industry. We have three specific experiences.

Our first two experiences were very routine requests for information. In the first case we requested a jurisdiction opinion from the Department of State with respect to the classification of material as munitions. We waited 6 months for the opinion.

In the second case we requested an opinion verifying our classification of goods under the authority of the Department of Commerce. We waited 5 months for this opinion.

In the third case we have waited 15 months for the release of some parts which were, in our opinion, improperly seized by bounty hunters of the Customs Service and which have been detained at the Seattle-Tacoma Airport. These parts are for the F-16 fighter being built in Europe by our NATO allies.

In each of these cases, the Government agency has been slow and unresponsive. In each of these cases we have undertaken significant expense to help find the resolution, which has significantly increased our cost of doing business. If one Government agency, with industry participation, were put in charge of export licensing and resolving such interdepartmental conflicts, the whole country would benefit.

Additionally, the majority of U.S. export shipments are nonmunitions sent to free world destinations. We suggest a self-certification procedure whereby exporters would operate under their own policies and procedures to self-grant export licenses for such shipments. This license-granting process would be similar to the present process used by Government contractors to safeguard classified material and is very similar to the process used by contractors to manufacture hardware for Government contracts.

Essentially, a Government agency would review and accept the export policy and procedure system established by an exporter. The exporter would self-police their operations to those policies and procedures. The relevant Government agency would possess the rights to audit and inspection to insure compliance. We believe this process provides adequate safeguards to meet national security concerns and is responsive to the needs of industry.

Thank you, Senator, very much for allowing me to appear before your committee.

Senator **Gorton**. Mr. Gellert, thank you.

Mr. Simon?

STATEMENT OF HERBERT SIMON, SECRETARY-TREASURER, JOSEPH SIMON & SONS, INC., TACOMA, WASH.

Mr. **Simon**. Thank you, Senator.

My name is Herbert Simon. I am secretary-treasurer of Joseph Simon & Sons, a scrap processing firm operating in the State of Washington since 1935. I appear here today on behalf of my firm, the scrap processing industry in the State of Washington and the Institute of Scrap Iron & Steel, Inc., the trade association representing the metallic scrap processing industry nationally.

I submitted today, Senator, a complete statement. However, I would just like to brief it with you to convey to you that the major obstacle to our industry in exporting today is the threat of regulatory controls by our Government.

Scrap processing is a small business industry which takes the wornout and obsolete metallics as well as the industrial byproducts generated in the country and converts them into manmade raw materials for the production of new iron and steel and other metals. Utilizing recyclable metallics results in astounding environmental benefits as well.

In short, it takes four times as much energy to make steel from iron ore as it does to make the same steel from scrap iron. Scrap iron is obviously a valuable commodity, and the United States has virtually unlimited supplies of that commodity.

In a recent study commissioned by the Metal Scrap Research and Education Foundation, it was found that there was an available inventory of ferrous scrap at the end of 1981 amounting to more than 680 million tons, in other words, a 15-year supply even assuming not another pound of scrap will ever be generated.

With a 15-year supply of scrap iron available and waiting for a market today, that inventory is growing each day as the metallic discards continue to be created throughout the economy. However, it is clear that with an inventory of scrap discards that has grown there must be more market if the scrap industry is to survive and if this country is to gain the full value of the scrap materials that it generates.

However, there are other benefits to be gained by this country if offshore markets are also developed, especially where there is no realistic hope for a domestic industry to use all the available scrap iron in a given region.

For example, the west coast—at the coastal location such as Washington much more scrap is generated than can be possibly utilized locally. The value of a viable scrap export trade in scrap iron and its positive balance of trade-balance of payments contribution cannot be overestimated in these times of trade deficits.

This administration, as have others before it, realizes that in order for the American economy to prosper there must be a world market for American products. There just isn't enough market demand for what American can produce if it looks only to its own shores as the market's limits.

Therefore, in order to meet the survival need, my company and many others like it undertook an intensive foreign market development program, and it worked. We were able to show that a small businessman, such as ourselves, with a highly desirable product could find a niche in the world market by making positive contributions to a balance of trade.

Scrap iron came from nowhere to become a major contributor to the plus sign of American international trade, one of few American industries making such a contribution.

We made the needed investments, committed large amounts of capital to be certain we could supply the needs of all consumers, both foreign and domestic. We made sure to meet those needs.

It should be stated that no American consumer was ever able to buy all the scrap iron he wanted when he wanted it.

In early 1973, when a few American steel mills found they had difficulty in making as much money-producing steel as they felt appropriate, what happened specifically was that these few mills found within the short supply provisions of the Export Administration Act to induce the Federal Government to induce export control. It was not a question of availability of materials. Rather, those mills felt that price controls of their raw materials would be in their best interest. Unfortunately, big business prevailed and the export of scrap iron was limited.

However, in 1979 the Findley amendment was added to the Export Administration Act at the behest of certain mills and foundries to monitor scrap. Because monitoring in the minds of foreign buyers always leads to controls, buyers placed orders for more than is needed to insure that their orders are recorded in advance of controls, thereby increasing their chances of obtaining the needed materials.

Because monitoring now finds order levels, the controls were found to be justified.

However, fortunately, in 1980 when the new monitoring provision was tested, the petitioners failed to prove their case, and the Department of Commerce said no to the request for monitoring.

The defense to us was costly, not just in travel dollars and legal fees, but because America's reliability as a scrap supplier was now further challenged. The consequences were that they, the foreign markets, looked for alternative sources of scrap iron, and today, because of many other world situations, American scrap is facing strong new competition from British and Russian scrap in addition to the historical competitors.

In conclusion, Senator, there is no reason for the Federal Government to exercise regulatory controls in the scrap export market.

As a small business man, I ask that Congress of the United States correct the adverse impact that misdirection of the Export Administration Act has had on the scrap industry and the Nation's interest in exporting scrap.

There has never been a scrap iron shortage, and the statutes should no longer be usable to impose domestic price controls in the absence of proven short supply.

I want to thank you for allowing me to be here today, Senator. I'm available to answer any questions you might have.

Senator GORTON. Thank you.

To the extent that I have not already said so, the full written statements of all of you who paraphrased or shortened them will be included in the record following the oral presentations.

Most of these questions will be general in nature, and any of you can answer them, as you will.

Have any of you ever been denied a license to export a product to a Communist country only to find that a foreign competitor was able to obtain such a license or able to supply an equivalent product.

Mr. Fluke, you seem to be nodding in the affirmative.

Mr. FLUKE. Yes, sir. We have found with reasonable frequency, however you define "reasonable," failure to take in the fact that there are competitive models to our instrument that may not be the same but they can generally fill the bill, or maybe in some cases are superior, and we run into it relatively frequently.

Also, I think I might add the fact of availability—and this situation existing frequently is lost sight of by the license-granting authority. They don't seem to be completely wise to it or want to take it into account very much.

It happens rather frequently. What's more, I think it will happen more frequently in the future, simply because a lot more people are getting into the business. It is a serious part of it.

Mr. **Wambolt**. Could I please make a comment on that?

Senator **Gorton**. Would you identify yourself, please?

Mr. **Wambolt**. Yes. My name is Ron Wambolt. I'm a partner of International Operations for the John Fluke Manufacturing Co.

It is not the final denial of the license that ultimately causes the majority of our business to be lost, but it is the delay. For example, since Mr. Fluke prepared his speech, we just learned that we lost a $500,000 order to a U.K. manufacturer from users in China, simply because they knew we could not supply our product in less than a 3- to 4-month delay going through the licensing process. They needed the product faster.

What is particularly annoying to us is that they would have bought our product had we been able readily to supply it, and we know the license would have ultimately been issued.

Senator **Gorton**. That was what I was going to ask.

Mr. **Wambolt**. Hundreds have been issued for the same product to us.

Senator **Gorton**. And that is one of the reasons that you made the suggestion that there be a generic license?

Mr. **Fluke**. Yes, sir.

Senator **Gorton**. Let me ask the same question in a little bit broader fashion and see if it applies to any of the other four of you. I will take out the Communist country part of that question and ask whether you have had serious problems in obtaining licenses to export an item which is pretty clearly available from other foreign competitors of your own. Mr. Simon?

Mr. **Simon**. Yes, Senator. Back in the 1960's we had export controls on nonferrous metals as well as scrap iron. They issued licenses to those who had historical records, thereby being able to limit the amount of export. What it did really was discriminate against many of the other people who were in the industry in being able to supply the world markets. Therefore, competitors around the world were able to supply world markets.

Senator **Gorton**. Mr. Gellert, do you want to make a comment?

Mr. **Gellert**. In our case it has never really been denied. It has just been the delay that caused the problem rather than denial. I do not recall our ever having been denied a license, but the delays are sometimes equivalent, as John Fluke mentioned.

Senator **Gorton**. Let me follow up on that, and maybe Mr. Fluke partially already answered this question.

What is the lapse time usually in getting a license? Maybe I can divide that question into two parts. What is the lapse time in getting a license to something which already has been licensed for a previous sale as against the time it usually takes to get a license when you are trying for it for the first time for a particular piece of equipment?

Mr. **Gellert**. In our case it ranges from 2 weeks to 6 months. There is no set pattern.

Senator **Gorton**. You have no way of predicting how long it is going to be in a given case?

Mr. **Gellert**. Not too well; no.

Mr. **Fluke**. There is no way of predicting, Senator. I would like to refer to Mr. Wambolt. He is directly associated with it. Applying for licenses is a daily occurrence in our place, so we have a fairly good cross section.

Mr. **Wambolt**. In the first instance, it is pretty hard to predict, but it is probably 7 to 8 months down to a minimum of 4 months if we have had previous approval for that product.

Senator **Gorton**. What you are saying is that even when you have had a previous approval it is seldom less than 4 months?

Mr. **Wambolt**. Very rarely would it be less than 4 months. The very minimum would be 90 days.

Senator **Gorton**. What is the explanation for that? Why shouldn't that be just a routine request.

Mr. **Wambolt**. I believe a big part of the problem is simply the workload of the people in the Office of Export Administration, just getting around to even finding your letter and processing your application.

Senator **Gorton**. Could the people who administer that act, as a practical matter, successfully administer the act if once a particular item had been licensed for export you did not need further licenses for it, or would that be simply an invitation for some unscrupulous exporters to call other things by the same name and sell overseas things that could not otherwise be licensed?

Mr. **Wambolt**. I think if we had approval for the same product, at least only the same end-users that we received approval for before—we do not necessarily need a blanket approval for that product to all end-users. If we had an approval for an end-user who was once approved, it would be very helpful.

Senator **Gorton**. John?

Mr. **Fluke**. It strikes me that, talking a little bit more about that, Senator, there is an opportunity to simplify the process materially and retain our competitiveness with what is going to be a sharper thrust by the foreign sources.

I would think that any company would be willing to have approval by model number for a given country or given countries, as the Government may elect, recognizing that there is a need for some surveillance, and have it extended at the Government's pleasure for time or a fixed time, or whatever might be possible, to cut out the ceaseless monotony of applying and applying and applying.

We do some 35 percent business overseas, and that results in a sizable number of orders, so we always have requests for license in the air.

There is one other factor I think it might be well to mention here. When we submit a request for license to the Department of Commerce, we know where it goes, but try to find anything out after that is just impossible.

We had an urgent case a while back where one of our people went to Washington, D.C., to try to dig one loose. After rattling around there a good part of a week at least, he was told by a person of reasonable rank, but I do not recall who it was right now and it is not important, that they could not tell where it was, that he had just better go home and wait for it. When he got home, the license was laying on his desk.

The procedures are just horribly inadequate and uncheckable.

Senator GORTON. If this single change were made in the act to do exactly what you two have proposed to this point, and maybe for the rest of you here, how much help would that be to you and your business? How would it affect your prices and how many more sales would you be able to make?

Mr. FLUKE. It would be a sizeable help.

Ron, you may want to add your opinion to this.

First of all, one of the most important things we have in dealing with a customer—there are two important things, the pricing and the delivery. He buys it for some purpose, and it has to be a satisfactory price. However, let's leave the pricing out because it is in issue in this thing. It is the uncertainty of delivery, particularly if it is used in a production process or a time process of some sort.

I would guess what we are doing by not giving that full weight is we are just encouraging them to look elsewhere or do it themselves, as I said.

The second thing is that there is a ceaseless—we get an order one day from a country and we apply for a license for that. A couple days later we get another order for the same thing, and we have to go through it all over again. It seems so needless for a time increment that is much more than is required for resolution. I think it is beyond the realm of reason.

When you consider the amount of business that we do, it is not great but it is not insignificant, either. This just has one heck of a lot of these things—the manpower, the checkup, the phone calls. It is the best friend that the telephone company ever had just because we are calling to find out where the heck they are.

The repetition required, apparently interpreted into the law—and I am not familiar with the law in detail, but there is no such thing as a blank pencil. When you get another order, you have to have the ticket that goes with it.

It just seems so needless to do this and so restrictive of this company's effective foreign trade to require that. We are our own worst enemies, Senator, in this case.

I think there is also a matter of getting parts, which has already been referred to. It adds further to it, and soon a customer gets fed up and says, "Heck."

Senator GORTON. Mr. Gellert?

Mr. GELLERT. I would say in our case it would have a very minimal effect on the cost of our parts. Our parts normally go into other parts. Believe it or not, we supply parts that go into the Airbus, also.

We have a very hard time selling over there because of this problem of reliability and their being able to rely on us. They will use every excuse to buy, in many cases, inferior parts from local suppliers because they say, "Well, we can't rely on American companies."

A case in point, on some of the parts that we supplied to the Airbus, it took some of the airlines, particularly Lufthanse and

Swiss Air, to almost force Airbus to use our parts because they said the parts they were getting from the French supplier were inferior parts. It is more a case of reliability.

Senator GORTON. It is time and reliability——

Mr. GELLERT. Right.

Senator GORTON [continuing]. More than price.

Mr. GELLERT. Right.

Senator GORTON. As you know, there was a great deal of pressure in the last Congress for the passage of so-called local content legislation to restrict imports into the United States. Personally, of course, I am very, very strongly opposed to that kind of legislation, but I would like to ask each of you whether or not you have come up against increasing domestic content legislation on the part of countries or places in which you sell your products. Is this something which is happening and inhibiting exports at all overseas?

Mr. FLUKE. It has not appeared to us, Senator.

Mr. SIMON. Senator, in terms of the scrap iron industry, we have not really been affected by limits of imports of our raw materials into their countries.

As an industry, we are 100 percent against limitation of import controls. We believe in the free market trade, and that has been our position over a long, long period of time.

Senator GORTON. Does anybody else wish to comment?

Mr. GELLERT. I would say it is done in matters that are much more subtle than legislation. I think I mentioned in my testimony about industry-government cooperation. It appears to us in countries with which we deal that there is much more industry and Government cooperation, so that any obstacles that are put in the way of our exporting or the foreign companies buying our parts are due to pressure from the Government, rather than due to legislation from the Government.

Senator GORTON. Go ahead, Mr. Wheeler.

Mr. WHEELER. In my comments I referenced this situation in Japan. We find that it is virtually impossible—we do not make things that are unique, but we do find in the cases that I mentioned that the Japanese Government would pay 150 percent of the price to have it made in their country as opposed to buying the existing product from our country.

There are other situations where we lose business in our own country because of subsidies that are granted in foreign countries, either to cover nonrecurring costs or to finance equipment. I do not favor those sorts of assistance here, but it is very difficult to compete when it virtually approaches dumping in that the production costs of the product are not borne by the manufacturer in the foreign countries in many cases. They are subsidized.

Senator GORTON. Would you all expect that if the U.S. Congress were to pass domestic content legislation you would be immediately faced with similar legislation and rules in countries to which you export?

Don't just nod your heads. You have to say it in order to be on the record.

Mr. GELLERT. I do not know.

Mr. WHEELER. I think there would be a possibility of that, yes.

Mr. FLUKE. There is always a possibility of reciprocity, Senator.

Senator GORTON. Let me ask you, while I have you here, about one other statute which has sometimes been claimed to inhibit exports.

Have any of you encountered problems in your own businesses as a result of the provisions of the Foreign Corrupt Practices Act?

Mr. FLUKE. We do not seem to have any, Senator. We have nothing to say on that.

Senator GORTON. It looks like in that respect no one on this panel has experienced that.

If I may, I would like to thank each of you for using your valuable time for coming and helping us out this afternoon.

As I said in my opening statement, we will have to renew the whole Export Administration Act well before the end of this year. As each of you knows, this is very controversial. The kinds of positions which you have taken are controverted, of course, by others who are afraid that all of our technology, or much of our technology, even of military use, will go elsewhere. I think you have made an excellent case for a number of significant changes which our economy simply needs in order to grow and to prosper because of our great dependence on foreign trade.

Mr. FLUKE. Senator, if I may, I just have one more sentence or two.

One thing that was not discussed too fully was Project Exodus. The customs agent may be an effective fellow in general, and I do not wish to contest that, but when it comes to judging some of this, particularly with the vagueness of the law, we find it to be a particular nuisance to have those people wading into the scene and not knowing really what they are looking for.

As I mentioned in my testimony, there is an assumption that we are guilty until proven innocent. We have had a number of holdups, and it is very difficult to find out the reason why or the circumstances surrounding it, of things being grabbed by unknowledgeable people, fouling things up.

I do not think it is very effective. I think it is a detriment and a cost runnerupper in the first order to the export process.

I do not disagree with the purpose because I think there have to be some checks. There has to be some policy observed, but to be put in the hands of inept people, which they are for this particular application—and I would not go further than that—is causing a lot of headaches for us. I think that probably ought to be part of the consideration.

Senator GORTON. That is a commonly expressed complaint.

Mr. GELLERT. May I say one thing? I think my company—and I am sure our trade association—wants to offer that if we can provide any further information or any further help in getting some of these restrictive practices amended in the renewal of the Export Administration Act, we would be more than happy to have the staff call on us at any time. If we have to come to Washington, D.C., to help, we will do that, too.

Senator GORTON. Thank you for the offer.

[Material follows:]

THE IMPACT OF THE U.S. EXPORT CONTROL PROCESS ON THE INTERNATIONAL BUSINESS OF THE JOHN FLUKE MFG. CO., INC.

TESTIMONY BY

JOHN FLUKE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER

TO THE

SENATE SMALL BUSINESS COMMITTEE FIELD HEARING

ON OBSTACLES TO EXPORTING FACED BY SMALL BUSINESSES

FEBRUARY 11, 1983
SEATTLE, WASHINGTON

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SECTION I - ORAL TESTIMONY

My name is John Fluke, I am Chairman and Chief Executive Officer of the John Fluke Manufacturing Company; we build electronic test and measurement instruments. Our fiscal year 1982 sales were $154 million. I am also Chairman of the Washington State District Export Council.

Today I want to talk to you about the subject of export controls; this process is very important to our company as more than 35% of our business is done overseas.

There has been much discussion of how the strength of the U.S. dollar on foreign exchange markets has adversely affected U.S. exporters. Our meeting here today can do little to change the value of the dollar on world markets. However, this committee can work to save exporters millions of dollars in expenses and gain us millions of dollars in sales, by simplifying export licensing procedures, by eliminating the need for many licenses, and by expediting the license review process.

During the past year, the John Fluke Mfg. Co. has incurred excessive direct and indirect costs because of lengthy delays awaiting the issuance of export licenses. The present "system" is under such a mountain of paper and red tape that it is barely functioning.

A. PEOPLE'S REPUBLIC OF CHINA

The export licensing process for the People's Republic of China is especially annoying because the U.S. government's public policy is to encourage trade with China and to restrict relatively few items.

It is the Fluke Company's experience that few license applications for China are denied yet all are subject to months of bureaucratic review and red tape. Included as part of my written testimony is a case history of one export license application for China that took nearly a year to be approved.

This case is a good example of all that is wrong with the export licensing process. This license covered an agreement under which a Chinese organization would assemble a Fluke instrument under our supervision. This contract, valued at over $1 million was signed in September, 1981 and required substantial planning and expeditures by the Fluke Company. However, it was November, 1982 before the export license was approved. The cost of financing the project for this 14 month period easily exceeded $100,000 and the majority of this expense is directly attributable to export licensing delays. These delays were not only very expensive but seriously strained our commercial relationship with the Chinese.

Export licensing procedures for the People's Republic of China must be improved if U.S. companies are to successfully compete against the Europeans and Japanese in that market. Specifically, we recommend:

1) The People's Republic of China should be treated as a free world country as is Yugoslavia in the export licensing process. Currently, license applications for China are subject to the same protracted review process that East Bloc applications go through.

2) For individual validated export license applications for China, the Commerce Department should be given greater delegation of authority. Every application need not be reviewed by a number of other agencies in Washington, D.C. Fewer applications should be sent to COCOM. Once COCOM has approved an application for a particular instrument, subsequent applications should not be sent there again. Review by COCOM, which appears to be no more than a rubber stamp organization, adds at least another 60 days processing time to an application.

If the licensing situation for China does not improve soon, U.S. companies will continue to lose ground to European and Japanese competitors. We continue to read about how the administration wants to expand trade with the People's Republic of China. However, China's Foreign Minister Huang Hua recently summed up very well the U.S. government's export licensing policy towards his country by saying, "Loud thunder, but little rain."

B. U.S. UNILATERAL EXPORT CONTROLS

Another serious disincentive to exporters are U.S. unilateral export controls. Included as part of my written testimony is another case history about an export license application for a circuit board tester for export to Bulgaria. This license was denied after several months of "review" because of a U.S. unilateral export control. The end result was that the Fluke Company lost a $106,000 contract to an Italian company because their government does not enforce a similar export regulation.

We are already having enough trouble remaining competitive with European and Japanese companies because of the strength of the dollar. We don't need our own government working against us as well.

U.S. unilateral export controls of electronic instruments should be eliminated when there is equivalent foreign competition.

C. FOREIGN AVAILABILITY

One of the most serious failings of the current export licensing system is the almost complete disregard of "foreign availability." The Export Administration Act directs the Department of Commerce in reviewing export license applications to take into consideration the availability of comparable foreign products. Export license applications are supposed to be approved if equivalent products are available from foreign suppliers.

The case history I just cited in discussing unilateral export controls is a perfect example of the disregard of "foreign availability". During the review of this license, the Departments of Commerce and Defense were informed several times that if the license was denied the current contract would go to an Italian company. However, these agencies showed no concern about the lost business and eventually denied the application.

The export licensing bureaucracy in Washington, D.C. must stop working in a vacuum. The U.S. electronics industry now has very serious competition in Europe and Asia and no longer monopolizes many technologies. Increasingly, an export license denial means the order will be filled by a European or Japanese competitor.

I strongly urge you to enact legislation forcing the Commerce Department to seriously consider "foreign availability" in the export licensing process.

D. THE COMMODITY CONTROL LIST

The Commodity Control list as it is now written restricts far too many microprocessor based instruments. We are now required to apply for export licenses for many instruments that have a dedicated civilian purpose simply because they contain a microprocessor.

Also, the Commodity Control list is written in extremely vague and convoluted language few can understand. Our technical people almost need to be trained as lawyers in order to sort their way through all the "howevers, exceptions and footnotes".

These regulations are also putting us at a competitive disadvantage. We have learned that European governments interpret the commodity control list much differently than does our Commerce Department. For example, the British government interprets an entry relating to microprocessor based instruments much more liberally than does the Commerce Department. As a result, a data-logger manufactured by one of our British competitors has been classified as a non-restricted item. This data-logger is equivalent in its capabilities to a new Fluke data logger. As it now stands, our British competitor has been able to freely export to the East Bloc and China whereas we will be waiting months for license applications to slowly grind their way through the bureaucracy.

A Commodity Control list written in plain English would solve many of these interpretation problems.

E. PROJECT EXODUS

Over a year ago, the U.S. Customs Service and the Commerce Department began a program called Project Exodus, an effort to prevent the illegal export of high technology equipment. We recognize that this effort is necessary to prevent the loss of our technological edge, especially in military related areas. However, Project Exodus as it is now administered is seriously restricting ethical companies from exporting non-critical technologies. This program assumes that a company is guilty of violating the export laws until proven innocent. (That is, *if* the company can ever find out which regulation they supposedly violated.) The main problems with Project Exodus are:

1) MANPOWER - the Customs Service has assigned many new inspectors to major airports to catch illegal shipments. However, there is not one inspector with technical expertise on the West Coast, now the center of high technology industry. As a result, these inspectors often hold up the shipment of products that clearly do not require validated export licenses. Furthermore, the Department of Commerce has not added staff to deal with the large increase in their workload caused by Exodus. So the exporter's shipment ends up needlessly being detained for several months - a very costly situation.

2) LACK OF AN EFFECTIVE AND TIMELY APPEAL PROCESS - there is no procedure allowing a company to quickly resolve questions about a detained product's classification. It now literally takes weeks just to find out which specific entry of the Commodity Control List was supposedly violated. Even after ferreting out the CCL Classification as well as identifying the licensing officer responsible for making the final determination, one then faces an imprecise and often capricious determination procedure. As an example we have had products previously classified, IN WRITING, by one licensing officer as General Destination items now re-classified by another licensing officer as restricted items following a detainment by Customs. These changes in determination resulting from personal interpretations of the regulations make any planning for export almost an irrational process.

SUMMARY

U.S. exporters already have their hands full dealing with a world-wide recession and the over-valued dollar. We do not need any more disincentives to exporting particularly from our own government. Your recommendations to Congress to simplify export licensing procedures and to eliminate the need for many license applications will greatly assist U.S. exporters in remaining competitive overseas.

SECTION II - WRITTEN TESTIMONY

A. FLUKE EXPORT LICENSING ACTIVITY DURING FISCAL YEAR 1982

An examination of the Fluke Company's experience with the export licensing process during the past 12 months (see details below) leads one to several inescapable conclusions:

- The licensing of Fluke Products is essentially an expensive and time consuming paper processing exercise.

- Few applications for China are being denied but all are subject to several months of bureaucratic review.

- Applications to export to Eastern Europe are likely to be denied or subject to a very protracted review process.

- Export licensing is a fragmented process spread throughout the Departments of Commerce, Defense, State, Energy and the CIA. There is no system in place allowing a company to quickly check on the status of an export license application. The statutory time limits for processing applications are largely ignored by these agencies. Because the process is so fragmented, officials of one agency are always blaming other agencies for processing delays or will deny an application based on the "belief" another agency would not approve it.

- Countless telephone calls to OEA officials go unreturned. Written requests for the status of pending license applications generally are not answered. Legitimate requests to expedite license application reviews, such as possible cancellation of a contract or expiration of a letter of credit, are usually ignored.

- Department of Commerce personnel are not technically qualified to evaluate many license applications. If they do not understand an instrument, they are likely to deny an application in order to play it safe.

LICENSING DETAIL

Within the past 12 months, the Fluke Company has submitted 61 applications for validated export licenses. To date,

- 20 were approved (33%)
- 4 were denied (7%)
- 37 are pending (60%)

The 61 applications covered Fluke sales of $3,585,240 or approximately 2.3% of total 1982 revenues. Presently, shipments valued at $2,094,197 are on hold awaiting issuance of export licenses. Shipments valued at $110,050 were denied export licenses within the last 12 months.

People's Republic of China

During the past year, 43 export licenses applications for China were submitted. To date,

- Ten applications were approved valued at	$1,317,380
- Two applications were denied valued at	27,675
- Thirty-one applications are pending valued at	1,985,355
Total for China	3,330,410

For those applications which were approved:

- Three months was the fastest processing time.
- Eleven and one-half months was the slowest processing time.
- Four and one-half months was the average processing time.

The Model 8520A Assembly Agreement license was submitted nearly one year ago. It was finally approved on November 12, 1982.

It is important to note that only two applications for China, both for the same instrument model, have been denied.

YUGOSLAVIA

Within the past year, six applications were filed. To date,

- Six were approved valued at	$1,140,864
- None were denied	
- None are pending	
Total for Yugoslavia	$1,140,864

Of the four applications that were approved three were processed in about a month and a half and the other application required four months of review.

EASTERN EUROPE (Bulgaria, Hungary, Romania and Czechoslavakia)

- Six applications have been submitted. Of these:

- One was partially approved valued at	$ 2,745
- One denied, another partially denied valued at	111,050
- Four applications are pending valued at	94,861
Total for Eastern Europe	208,656

The one license that was partially approved was processed in three months. There is a good chance that most of the pending applications will be denied by the Defense Department. One of the pending applications was submitted over a year ago.

"FREE WORLD" LICENSES

Five license applications were filed for non-communist countries not covered by our distribution license; Kuwait, Zimbabwe, the Ascension Islands and Iraq.

- Three were approved valued at	$ 32,079
- None were denied	
- Two are pending valued at	13,981
Total	$ 46,060

The approved "free world" applications were processed in about one month's time.

CUSTOMS SEIZURES

Within the past four months, five Fluke shipments to China have been detained or seized by U.S. Customs in Seattle and San Francisco. All of these cases were a result of "Project Exodus," a program by the U.S. government to prevent the illegal shipment of high technology equipment. This program is having a serious impact on the flow of Fluke instruments to China. Specifically,

- Customs Inspectors do not have sufficient training to enable them to distinguish between a voltmeter and many household appliances. As a result, they are needlessly detaining numerous shipments of electronic instruments bound for China.

- Many Customs officials do not understand the export licensing process; believing that the State Department issues licenses to ship to unfriendly "Communist countries."

- Once Customs detains a shipment, they send copies of the shipping documents and the technical specifications to the Commerce Department in Washington, D.C. to determine if the shipment should have been licensed. In many cases, the Commerce officials are classifying instruments as restricted items without adequate technical information and are not referencing the instrument's export licensing history. Two Fluke instruments, which in the past Commerce stated do not require an export license have been seized by Customs because one Commerce official now believes they should be restricted. Also, there is no administrative procedure to appeal these "technical" determinations.

- Three Fluke shipments are currently seized by Customs. These instruments should be classified as "G-Dest" items. Despite numerous packets of technical information, personal visits and telephone calls, litte progress has been made in securing the release of these shipments.

- Customs officials recommend that all Fluke instruments that do not require an export license, known as "General Destination" or "G-Dest" items, be classified as such in writing by the Commerce Department. However, because of the backlog of license applications, "G-Dest" classifications are a very low priority at the Commerce Department. One request for a "G-Dest" determination took nearly 3 months to obtain and required three personal visits and at least five letters to OEA.

B. FLUKE COMPANY RESOURCES REQUIRED BY THE EXPORT LICENSING PROCESS

1. DIRECT COSTS

Our direct expenditures for personnel, travel and related support costs to meet the export licensing process in FY 82 exceeded one quarter of a million dollars. These costs are broken down as follows:

- One full time export licensing administrator and half time support of one secretary.
- One member of Fluke legal staff is devoting half time to export licensing.
- The Manager of International Market Development is spending 25% of his time on export licensing matters.
- Individuals in international order processing, shipping and at the Fluke subsidiary in the Netherlands devote approximately 10% of their time preparing documentation to assure compliance with export regulations.
- The Sales Manager for Asia spends about 15% of his time on export licensing matters relating to China.
- An individual within each Business Unit devotes about 5% of their time classifying Fluke instruments under the export commodity control list and speaking with export licensing officials in Washington, D.C.
- Outside counsel has been retained through the summer and fall of 1982 to help expedite applications and to assure compliance with the export regulations. Cost in fiscal year 1982 of such counsel was $4,000.
- Within the past year, six trips have been made to Washington, D.C. to meet with export licensing officials.
- Other expenses to support the licensing process are substantial. Phone bills to Washington, D.C. are very high. (Few calls are ever returned). At OEA's request, all applications and correspondence with them are sent via courier service as they cannot assure that regular mail will ever reach them.

2. INVENTORY/PROJECT FINANCING COSTS

Once an order or project requiring an export license is received, the Fluke Company will normally begin building the instrument or will start preparation for the project. Most contracts with Chinese or East Bloc customers are covered by letters of credit under which payment is not made until well after the goods are shipped. Shipment is usually made shortly after receipt of the validated export license. The tremendous cost of financing this inventory is best illustrated by the Fluke Company's experience with export license applications for China. During the past year, license applications were submitted for orders totaling $3.3 million. Assuming the average processing time we have experienced, it has been about five months before we can make shipment. At an average interest rate of 15% for the year, financing costs for these China orders alone was approximately $208,000.

3. RESOURCES REQUIRED FOR THE EXPORT LICENSING PROCESS DURING 1983.

With the anticipated growth of Fluke sales in China and the U.S. Customs Service's efforts to restrict the illegal export of high technology equipment to Communist countries, a considerable amount of additional work is needed over the next year to assure compliance with the export regulations and to prevent seizures of Fluke shipments.

- Standard procedures must be developed for classifying instruments and components and for licensing procedures.

- Training manuals and courses need to be developed for domestic and international order processing, shipping and sales and marketing personnel to assure understanding of and compliance with export licensing regulations.

- A substantial amount of time, both on the phone and in person, will have to be spent with Customs Service personnel, explaining the U.S. government's export regulations and Fluke Company efforts to comply with those rules.

- A reporting system will be developed to assure that appropriate personnel are informed about changes in the regulations and the status of license applications.

- Our exports in 1983 would be substantially higher if these resources could be used to develop business, rather than being wasted on a seemingly unneeded process.

SECTION III - CASE HISTORIES

A. Digital Multimeter Project - People's Republic of China

On September 26, 1982, the John Fluke Mfg. Co., Inc., signed a contract with the China Electronics Import and Export Corporation in Beijing, China, calling for the assembly of Fluke Model 8520A Digital Multimeters (DMM) in the PRC by the Beijing Radio Research Institute (BRRI). This contract, valued in excess of $900,000, was the first step in what we hope is a long term commercial relationship with the Chinese and was the culmination of an intense five year market development effort by the Fluke Company against fierce foreign competition.

Under this contractual agreement, BRRI will assemble the 8520A DMM's from kits. These instruments are system multimeters incorporating ten year old technology that is now two generations removed from state-of-the-art instrumentation. These meters are best suited for a production test environment rather than an engineering or design application.

Because of export licensing delays experienced for this project, the Fluke Company faced not only possible cancellation of the order due to having missed contractual obligations but also the severe financial hardship of holding unshippable kit and assembly equipment inventory.

The following narrative is meant to illustrate the byzantine handling this case has been subjected to and the enormous amount of time, energy and money expended by the Fluke Company to secure U.S. government approval of this project.

Because the BRRI agreement involved the assembly of instruments it was not a routine export license case. Thus the Fluke Company spent substantial time consulting with the Department of Commerce throughout the fall of 1981 on the proper format and content of the application. Approximately three man months were expended preparing a 200 page technical presentation on exactly what was involved in the assembly process and what level of technology transfer would occur.

In early January 1982, the application was personally submitted to the Department of Commerce in Washington, D.C. by the Fluke V.P. of International Operations.

The application was returned to Fluke without action in early February, requesting that it be resubmitted in a different format. This came in the face of four months of effort preparing the case per Department of Commerce instructions.

The application was altered and resubmitted immediately. During March, April and May Department of Commerce personnel were contacted weekly to determine the status of the application only to learn it was still "under review."

When the application was re-submitted in February, it was determined that the Department of Defense would also review the case. Under the Export Administration Regulations, applications to be reviewed by other agencies must be forwarded to them by Commerce within 30 days from submission. Under law, the Defense Department should have received the application by the end of March.

Two months later, in early June, after repeated calls from Fluke management inquiring about the case status, the President of the company contacted the Departments of Commerce and Defense. We discovered at this time, contrary to several Commerce Department claims, that the complete case file was in fact never sent to the Pentagon. The only information Defense had received was a two page cover letter from Fluke's Vice President of International Operations summarizing the case coupled with the D.O.C.'s assessment of the project.

The Department of Defense received the case's technical support documentation only after an attorney retained by the Fluke Company hand-delivered another set.

During June and July, the application was supposed to have been considered at various Inter-Agency meetings. However, it was not until August 2 that the application was finally approved by the Departments of Commerce and Defense. This was sixty days beyond the maximum time set forth for consideration in the regulations.

When the application was initially submitted, some eight months earlier, it was determined that after the U.S. government approved the license application, it would then be reviewed by COCOM, a Paris based security organization composed of the NATO countries and Japan. Because we were behind on the contractually stipulated shipping deadline, the Fluke Company requested the Departments of Commerce and State to expedite the COCOM review via the "urgency proceedings" process.

However, ten days elapsed before the State Department telexed a three page case summary to the U.S. delegate to COCOM in Paris.

On August 12, in one of the numerous telephone conversations with the U.S. delegate in Paris, we learned he could not put our case on the COCOM agenda until he received back-up technical information from Commerce.

Another week passed and the back-up information did not arrive. The Fluke Company sent additional copies of the technical data via air courier directly to the U.S. delegate in Paris.

The application was finally placed on the COCOM agenda for August 31; nearly a month after we formally requested the Departments of Commerce and State to "expedite" the COCOM review. The U.S. Delegate to COCOM, Mr. James LeDesma, informed us that under the "urgency procedure," the COCOM countries would have only one week, instead of the standard two weeks, to evaluate the case.

However, when we telephoned Mr. LeDesma on September 1, he informed us that five countries had requested another week for review. He said that no technical questions had been raised by that time. The application was placed on the agenda for the next COCOM meeting on September 7.

Mr. Ledesma was telephoned again on September 8. He said that the same five countries that had requested more time last week, had again requested another week's extension. Mr. LeDesma said he was not allowed to tell us which five countries had requested additional time. He stated that he did not know why they needed more time, adding that this case was relatively "new" on the COCOM agenda. He said "eventually" the other delegations would be asked why he requested more time but did not commit as to when that would be done. No technical questions had been raised at the September 7 meeting, according to Mr. LeDesma.

After reiterating our concern that the contract could be cancelled by the customer should we fail to meet our September 24 shipping deadline, we asked Mr. LeDesma when he thought the application would be approved and if there was some influence we could exert to have the review expedited. He said there was no way he could predict when the application would be approved, and at that point, there was nothing we could do except to wait for technical questions to be raised.

On September 15, Mr. LeDesma was contacted again. He said that of the five countries, three had approved the case, but two countries had raised a technical question. They wanted to know what type or types of software would be provided. LeDesma said that the response would have to go back through the State Department Office of East-West Trade in Washington, D.C. The following day the answer to the question was read over the phone to an individual at the State Department. Two days later the same information was telexed to Mr. LeDesma through the Commercial Section of the U.S. Embassy in Paris by the Fluke company.

Despite the fact that Mr. LeDesma had the information two days after the question was raised, he did not give it to the two countries for nearly two weeks because he did not have all the "authorizations" from Commerce and State Department officials that our answer was in fact a "valid" one. During this two week period, the Fluke Company called Washington, D.C. daily in an effort to get the needed authorizations. Each day there seemed to be a new excuse; the person who could issue the authorization was sick of travelling or was in a meeting.

On September 29, Mr. LeDesma said that he had received all the authorizations and the case was on the agenda again for October 12th. He stated that under COCOM rules, the countries had two weeks to evaluate the response. Mr. LeDesma was contacted on October 12 and said that the case was scheduled for October 14. He denied having earlier said it was on the October 12 agenda.

Mr. Ledesma was contacted again on October 14. He said that one country had approved the case but the other country asked for another week for review. The U.S. delegate to COCOM was contacted again on October 21 to learn that the case had finally been approved. It had taken nearly three months from the time the case was approved by the Commerce and Defense Departments until COCOM had completed its review.

Because of contractual problems, the Commerce Department was requested to expedite the processing of the application once it was approved by COCOM. However, it was not until two weeks later, on November 5th, that the technical data license was validated. It was still another week, on November 12, before the license for the instrument kits was validated. In other words, it took three weeks to expedite simply the validation of the licenses despite countless telephone calls by the Fluke Company and the Seattle District Office of the Commerce Department.

On November 16, the technicians from Beijing Radio Research Institute finally arrived in Seattle to begin the assembly training. This was nearly FOURTEEN MONTHS after they had signed the contract with the Fluke Company.

B. Lost Business Due to U.S. Unilateral Export Controls

CONTRACT FOR A CIRCUIT BOARD TESTER LOST TO AN ITALIAN COMPANY BECAUSE OF U.S. UNILATERAL EXPORT CONTROLS. CONTRACT VALUE - $106,000. Export license application #A603229.

- Application submitted January 29, 1982

- Application "returned without action" three months later requesting more information on the "computer system parameters."

- This circuit board tester was classified under export commodity control number 4529B, a U.S. unilateral control. Many COCOM countries do not require companies to file export license applications for equivalent equipment.

- On July 31, the Commerce Department issued the export license. The following week the Commerce Department called asking that the license be returned as "all the reviews" had not been completed. The Defense Department had requested to review the application. The Commerce Department was asked to expedite the review as the customer had threatened to cancel the contract unless delivery was made soon.

- Despite numerous phone calls to Commerce and several unkept promises to follow-up, the application did not leave the Commerce Department for another six weeks.

- Throughout September, the Defense Department was urged to expedite the application review because of continuing threats that the contract would be cancelled and the order would be filled by an Italian company. Defense officials admitted they did not fully understand the equipment but continued their review for possible military applications.

- On October 15, representatives of the Fluke Company's East European sales representative visited the Department of Defense in Washington, D.C. Despite all the previous phone calls, Defense officials still had not completed their review and acted as though they were unfamiliar with the case.

- At this meeting, Defense officials were reminded that the contract would go to an Italian company if a decision was not made within the week. The Defense Department thought this was "unfortunate" and suggested we request the State Department file a protest with the Italian government for allowing the export of a similar instrument.

- This suggestion made little sense as ONLY the United States is preventing the export of this type of equipment.

- On October 28, the Defense Department informed us the application would be denied for "national security reasons".

The United States' unilateral control of this type of equipment is only guaranteeing sales for our European and Japanese competitors and is NOT restricting the export of technology to East Bloc countries.

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STATEMENT BY:

William A. Wheeler

President, General Manager, Chief Executive Officer of Decoto Aircraft, Inc.

Address: 2801 West Washington Avenue
Post Office Box 9907
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Before the Joint Committee: Small Business Committee and Commerce Committee

Date of Appearance: Friday, February 11, 1983 at 2:00 PM

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January 31, 1983

Senator Slade Gorton
2988 New Federal Building
915 Second Avenue
Seattle, Washington 98174

Attention: Creigh Hilen Agnew

Dear Senator Gorton:

SENATE HEARING ON SMALL BUSINESS AND SENATE COMMERCE COMMITTEE--EXPORTING

I wish to thank you for including me on the panel for the Joint Hearing of the Senate Commerce Committee and Small Business Committee, scheduled for Friday, February 11, 1983, at 2:00 PM in Seattle.

I received your letter of January 19, 1983--Commerce Committee--acknowledging my support for the funding of the Export-Import Bank. You advised that a resolution had been passed by Congress and signed by President Reagan at levels "close to those of last year: $4.4 billion for direct loans and $9.2 billion for loan guarantees."

This was a success versus the drastic reductions that the administration had proposed, but if direct loans and loan guarantees were increased, our overall economy would even show further recovery.

There are several clear issues which manufacturers in the United States are becoming well aware will have major bearing on the future. One of these is that foreign competition is increasing at an accelerating rate. Another is that there are many barriers to exporting, not the least of which are those established by the countries to which we might export. Another is that foreign governments support many of their industries in ways that would be illegal in the U.S. because we have anti-trust laws and restraint of trade laws which do not exist in most other industrialized countries.

Decoto Aircraft, Inc., is a designer and manufacturer of hydraulic components for the aerospace industry and also has done some very critical component manufacturing for the FFTF nuclear plant at Hanford, Washington. During the past four years we have installed $4 million in new state-of-the-art equipment to keep efficient. We find that competition from foreign manufacturers is gradually cutting down our market, and much of this is because of foreign government "offset" pressure on our U.S. customers. In other words, French, Israeli, English, German, and to a great extent Japanese competitors are taking business from us in the U.S. Some of this is because they are lower priced for legitimate reasons, and some is because their governments pay some or all of the non-recurring costs, and some is because their state owned airlines insist that our airframe manufacturers buy a specified amount from companies in the purchasing country.

An example: the Wing Newsletter issue of January 19, 1983, Japan's aerospace and aviation weekly, points out that M.I.T.I., the Ministry of International Trade and Industry, has approved funds to help promote the YX-X next civil transport development program and the XJB new fanjet aero-engine development program. These programs are being financed at 65% by the government. The terminology here is significant as the YX was the Boeing 767 program heavily financed by the Japanese government. The YX-X is Japan's competition to come soon for Boeing, Douglas, Airbus, etc.

I mention these points only to emphasize that U.S. companies, particularly small-ones, are at a tremendous disadvantage because of our lax laws governing imports from foreign countries coupled with subsidies given by foreign governments to our competitors. There is no way a small company can really compete. When the decision has been made by a foreign industry to take the business, they close the door on others.

I do not condone the actions of these foreign governments and certainly do not want similar subsidies made available here, because in our global economy these things will all shake out--provided we fight on the major fronts or with the major product areas.

My company has exported equipment over the years only in two forms.

1. Our sales to commercial airline manufacturers, Boeing and Lockheed primarily, become part of the aircraft exported by these manufacturers. Therefore, since 60% of their sales are exports, 60% of our commercial sales can also be considered exports.

2. Spares sales of items of our design and manufacture exported directly to the operators of commercial aircraft using these items represent 5 - 8% of our commercial product sales, or 3 - 5% of our total sales.

The importance of the spares business is noticeable in the current economy as our original equipment sales are off, but our export sales are higher this year compared with last year. Ultimate exports for Decoto Aircraft were 45% last year and are running 36% this year of total sales, countingthe 60% of commercial sales.

The ultimate health of Decoto Aircraft and thousands of companies like ours depends upon our being able to maintain a share of the world market, not just part of the domestic market.

To consider Export-Import Bank loans and guarantees as a means of supporting such world market sales makes very good sense when evaluating the assistance given by other governments to the competitors of U.S. suppliers.

Airbus, the second largest manufacturer of commercial aircraft, after The Boeing Company, is owned by four governments. Because these governments make attractive financing available worldwide for the Airbus customers as well as making other incentives available, the U.S. government should match the loan arrangement.

Aircraft sales worldwide should be made on the traditional basis of quality of the product and service, and the cost to the customer or operator of the equipment. We should neutralize financing benefits offered by other governments so that the business economics can prevail.

Traditionally the Export-Import Bank has returned funds rather than being a drain to the taxpayers. Even if some of the future loans do cost the government, the jobs generated by the business resulting, and the taxes paid by the businesses and employees will far overshadow the costs of the financing.

Decoto Aircraft currently with 167 employees and export sales amounting to 36% of sales, can say that 60 people are working because of our export sales. When the equivalent 36% of all our material and service purchases are coupled to the taxes our 60 people represent, the importance of this exporting business is clear. In our community, we are one of the largest manufacturers.

Perhaps someday direct exporting of high technology products will become a reality, but at this point in time, in our 62nd year of business, we at least need the pathway clear to exporting as a part of the excellent air transports designed and built in the United States, and then the after market spares sales that result for tens of years afterwards.

Thank you, Senator, I look forward to the hearing.

Sincerely,

DECOTO AIRCRAFT, INC.

William A. Wheeler
President

STATEMENT BY
HARLEY W. BIRD, PRESIDENT, and RANDOLPH CARTER, VICE PRESIDENT, SPHERE SOLID WASTE, INC.
P.O. BOX 22826, SEATTLE, WA 98122
BEFORE SUBCOMMITTEE ON EXPORT PROMOTION AND MARKET DEVELOPMENT
SENATE SMALL BUSINESS COMMITTEE
FEBRUARY 7, 1983

We are pleased to be asked to testify on the obstacles faced by small businesses in export trade. As you know, fewer than 15% of all American businesses have substantial export activities.

International trade stimulates the economy, extends the shelf life of consumer industrial goods up to 10 years on the average. For the U.S., exports especially to oil producing countries, significant importing helps to reverse trade deficits. Primarily. Fortune 500 companies are responsible for the vast majority of U.S. export activity. However, our experience has shown that there are substantial benefits to the small business in the world of international activity.

We will limit our testimony to the barriers to trading in foreign countries, as the above has been well documented and motivated this hearing.

The three primary barriers to small business activity in foreign markets are:

1. Information - The timely and relevant access to information regarding trade opportunities, and trends in foreign markets.

2. Finance - Availability of credits to finance expansion into foreign markets and credits to finance the sale of goods in those markets. Also, financing for bonds required by foreign governments.

3. Trade Promotion - Aggressive placement of U.S. goods/services in the marketplace and motivation of U.S. companies to participate in those markets.

The obvious question arises with respect to the government's role in reducing these obstacles and stimulating foreign trade by small businesses.

Again, calling upon our experience, we have found the government and private sector to possess all of the necessary tools to address the problems and overcome them jointly.

INFORMATION

Communicating trade opportunities to small businesses, informing them of real business opportunities, is the number 1 priority. There appears to be a number of well structured agencies all generating the basic information gathered through consulates, embassies, AID field officers and regional agriculture station.

Our recommendation is that a single small business liaison collect and coordinate data from all of these agencies to a central program. This program would widely disseminate and promote trade opportunities to small businesses.

Another valuable service of trade leads, contracts or trends would be large U.S. firms currently involved in foreign trade. In many cases, these large firms have needs which can be filled by small U.S. firms. Particularly when involved in work supported by direct U.S. funding, there should be a small business participation goal. U.S. Fortune 500 firms can also plug into this information network, with ideas, leads, etc.

In many cases, an idea of the trend a nation is heading in or world development trends can assist a small business to gear up to promote his products into that development market. Sources of information could range from

Departments of Defense, Commerce, Agriculture and State.

FINANCE

Financing exports presents a barrier to foreign market development to no less a degree than does the lack of market information. To mention just a few needs in this area:

a) Export investigation and foreign market intelligence gathering

b) Lines of credit for exporting

c) Loan guarantees

d) Client financing

e) Bond financing

FOREIGN TRADE PROMOTION

An aggressive marriage of government and industry has proven successful over the past 50 years in aerospace, military, and construction. These projects often involve the spending of millions on the promotion of successful trade.

A small business may not be equipped or motivated to enter a foreign market and risk a loss of dollars or manhours in unfamiliar cultures or business procedures. Here the government can be an indispensable tool - government trade shows and other promotional activities that place U.S. goods/business people in the foreign market arena with traditional partners. Also, government can arrange for trade tours of foreign government officials and businessmen across the U.S. to regional gatherings of interested small business people.

When appropriate, government officials can encourage purchase of U.S. goods as a means of foreign assistance. Such activities in agriculture has proven very successful.

We believe that gearing up every appropriate branch of government and government official to promote U.S. products/services in the foreign sector is a priority.

In conclusion, we would like to acknowledge the help we have received from employees of a variety of agencies and embassy/consulate officials. Small business is big business for America and exporting is becoming increasingly important to maintain the viability and longevity of American small business.

25th anniversary

ELDEC

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STATEMENT BY
MAX GELLERT, PRESIDENT, ELDEC CORPORATION
BEFORE THE SENATE SMALL BUSINESS COMMITTEE'S SUBCOMMITTEE ON EXPORT PROMOTION AND MARKET DEVELOPMENT AND THE SENATE COMMERCE AND TRANSPORTATION'S SUBCOMMITTEE ON SCIENCE

February 11, 1983

Good afternoon, my name is Max Gellert. I am president and chief executive officer of the ELDEC Corporation. ELDEC is a designer and manufacturer of precision electronic and mechanical equipment for the aerospace and marine industries. We expect our sales this fiscal year to be in the range of $60 million. The jobs of 485 of our 1,155 employees in the Seattle area are directly related to our export business.

The present administration of export regulations is slow, expensive, and cumbersome for companies like ELDEC. Satisfaction of these regulations increases our cost of doing business, reduces our competitiveness in international markets which reduces our ability to grow, earn profits, pay taxes, and expand our employment base.

A favorable balance of trade is needed by the U.S. to maintain a strong and healthy economy. When the federal government exercises control over exports to implement foreign policy, it may have an adverse effect on exports. In many instances the control of exports may have negative effects on a particular industry and/or particular companies. Therefore it appears reasonable to expect an environment of government and industry participation and cooperation for the creation and administration of export and import controls. We recommend the federal government undertake four fundamental changes to legislation governing the control of exports, some of which are within the Export Administration Act.

First, we would urge amending the Export Administration Act to eliminate the use of export controls on nonmilitary material and information as a means of implementing foreign policy. There is no evidence of success in the use of export controls with respect to foreign policy. The Soviet grain embargo and the Soviet oil pipeline equipment embargo are good examples of the failures of export controls to change the method of behavior of other nations. Supporting foreign policy through export controls places intolerable burdens on U.S. firms that compete in international markets. Such controls place U.S. companies in the position of being inconsistent, unreliable suppliers to our overseas customers. The uncertainty of the availability of export licenses, the uncertainty of competitive export financing, and the uncertainty of re-export authorization all contribute to this image of inconsistency and unreliability. Firms which are successful in the export market depend on positive, long-term customer relationships. The aerospace industry, with which I am most familiar, has historically maintained one of the most favorable balances of exports over imports of any U.S. industry. The sale of commercial aircraft is particularly influenced by long-term customer relationships. More than half of the commercial airliners built in the United States are sold to customers outside the United States. The sale of aircraft in international markets provides many jobs at ELDEC for the manufacturing of equipment for the aircraft and additional jobs to build spare parts over the 20- to 25-year average life of such aircraft. This favorable trade balance is in some jeopardy due to our foreign image.

Secondly, we recommend amending the Export Administration Act by deleting re-export controls. There simply is no practical way to control the movement of aircraft parts that are sold, leased, or borrowed among the world's airlines. Re-export controls are, at best, difficult to police and enforce, may cause delays in the sale of U.S. products, are unique to U.S. goods, and an expense to U.S. firms or firms dealing in U.S. goods. Most parts found on commercial airliners are freely available in international markets from non-U.S. sources. Re-export controls are, therefore, ineffective, as there is foreign availability of most of this equipment.

Third, we should clarify the definition of "munitions" in the International Traffic in Arms Regulations. The U.S. State Department is responsible for licensing and controlling the export of munitions. The present definition expressed by the State Department regulations of a munition is an item which "is manufactured to military specifications (mil-specs)." This definition, if applied literally, could include nuts, bolts, washers, etc. It is ridiculous that we should go through the administrative process of filing license applications, receiving license applications, and maintaining files for all items containing parts built to military specifications. Therefore, a product built for a commercial aircraft which contains parts which meet military specifications could be construed to be a munition per the State Department definition. We have been unable to obtain a usable definition from the State Department, even though some of the State Department officials agree their present definition is not very workable. With the help of our counsel, we have developed a clearer definition which we would propose. It is "those pieces of hardware which are designed or built specifically to military specifications to be used on a military vehicle."

Fourth, we recommend amending the Export Administration Act to establish a single government agency to grant export licenses and to resolve intergovernmental tangles. At present, the following six government departments have export regulations and controls:

U.S. Department of State
U.S. Department of Commerce
U.S. Department of Treasury
U.S. Department of Interior
U.S. Department of Energy
U.S. Department of Justice

These regulations are difficult to understand, poorly or at least slowly communicated, and often represent conflicts. The administration of export regulations is slow, expensive, and cumbersome. It has been our experience that government agencies are not prepared to be responsive to the information needs of industry. We have three specific experiences. Our first two experiences were very routine requests for information. In the first case we requested a jurisdiction opinion from the Department of State with respect to the classification of material as munitions. We waited six months for the opinion. In the second case we requested an opinion verifying our classification of goods under the authority of the Department of Commerce. We waited five months for this opinion. In the third case we have waited 15 months for the release of some parts which were, in our opinion, improperly seized by bounty hunters of the Customs Service and which have been detained at the Seattle-Tacoma Airport. These parts are for the F-16 fighter being built in Europe by our NATO allies. In each of these cases, the government agency has been slow and unresponsive. In each of these cases we have undertaken significant expense to help find the resolution, which has significantly increased our cost of doing business. If one government agency, with industry participation, were put in charge of export licensing and resolving such interdepartmental conflicts, the whole country would benefit.

Additionally, the majority of U.S. export shipments are non-munitions sent to free world destinations. We suggest a self-certification procedure whereby exporters would operate under their own policies and procedures to self-grant export licenses for such shipments. This license-granting process would be similar to the present process used by government contractors to safeguard classified material and is very similar to the process used by contractors to manufacture hardware for government contracts. Essentially, a government agency would review and accept the export policy and procedure system established by an exporter. The exporter would self-police their operations to those policies and procedures. The relevant government agency would possess the rights to audit and inspection to ensure compliance. We believe this process provides adequate safeguards to meet national security concerns and is responsive to the needs of industry.

Thank you very much for allowing me to appear before your committee.

STATEMENT OF HERBERT SIMON
SECRETARY-TREASURER
JOSEPH SIMON & SONS, INC.
BEFORE THE
EXPORT PROMOTION AND MARKET DEVELOPMENT SUBCOMMITTEE
SMALL BUSINESS COMMITTEE
UNITED STATES SENATE
SEATTLE, WASHINGTON
FEBRUARY 11, 1983

My name is Herbert Simon. I am Secretary-Treasurer of Joseph Simon & Sons, Inc., 2202 E. River Street, Tacoma, a scrap processing firm operating in the State of Washington since . I appear here today on behalf of my firm, the scrap processing industry in the State of Washington and the Institute of Scrap Iron and Steel, Inc., the trade association representing the metallic scrap processing industry nationally.

Scrap processing is predominantly a family-owned, small business industry which takes the worn out and obsolete metallics, as well as the industrial by-products, generated in the country, and converts them into man-made raw materials for the production of new iron and steel and other metals. The scrap processor is a key factor in the recycling chain and he had performed this service for many years before the term recycling was appreciated.

Utilizing recyclable metallics results in astounding environmental benefits. For example, according to EPA data, using scrap iron instead of virgin iron ore to make new iron and steel means a reduction in:

air pollution effluents of 86%

water pollution of 76%

water use of 40%

mining wastes of 97%

Moreover, using scrap iron instead of iron ore yields a 74% saving in the energy required to make new iron and steel products. In other words, it takes four times as much energy to make steel from iron ore as it does to make the same steel from scrap iron.

Scrap iron is obviously a valuable commodity and the United States has virtually unlimited supplies of that commodity. In a recent study commissioned by the Metal Scrap Research and Education Foundation, the international economic consulting firm, Robert R. Nathan and Associates, found that there was an available inventory of ferrous scrap at the end of 1981 amounting to more than 680 million tons, a 15 year supply even assuming not another pound of scrap will ever be generated. This inventory is available and will come to the market when demand requires those volumes.

The record year for U. S. scrap iron purchases by American steel mills and foundries and all foreign steel mills and foundires was 1974, when a total of 60 million tons of scrap iron were bought. The total purchases for the years that followed 1974 never approached that record, and, in fact, the total for the year 1982, both domestic and foreign, is estimated to be in the 38-39 million ton range.

With a 15 year supply of scrap iron available and waiting for a market today, that inventory is growing each day as the metallic discards continue to be created throughout the economy. Unquestionably, the country will face a growing stockpile of available, but unwanted, recyclable materials unless additional markets are found and existing markets are expanded.

The scrap industry has worked closely with the domestic users of scrap iron to stimulate their interest in employing more electric furnaces -- virtually a 100% consumer of scrap iron -- and also to raise the percentage of scrap iron used in iron ore based furnaces. The number of new electric furnaces that have been installed indicates that many of the clear benefits of scrap iron usage have been recognized by investors in new mills and foundries. The experimentation underway in some ore based mills to increase the scrap iron charge is likewise encouraging.

But, it is clear that with an inventory of scrap discards that has grown in every year since 1956 -- including the peak demand year of 1974 -- there must be more markets if the scrap industry is to survive and if the country is to gain the full value of the scrap materials that it generates. Obviously, the highest value to the country would be for more American steel to be made with more American scrap -- and that is occurring. However, there are other benefits to be gained by this country if off-shore markets are also developed -- especially where there is no realistic hope for a domestic industry to use all the available scrap iron in a given region -- for example, the West Coast.

This need for off-shore markets is more critical for the coastal areas than for many inland locations for obvious reasons. The location of most major scrap consuming points is inland. At the coastal locations, such as Washington, much more scrap is generated than could be utilized locally or nearby due to high transportation costs and, absent an export market, the material will simply accumulate, be landfilled and rust away. (It is tragic to note in that regard, that since 1976,Nathan Associates estimated that 1 million tons of backlogged scrap iron rusted into oblivion for lack of a market.)

The value of a viable export trade in scrap iron and its positive balance of payments contribution, cannot be over estimated in these times of trade deficits. And, from what we read coming out of Washington, D. C., there is active encouragement for Americans to get into the export business. This Administration, as have others before it, realizes that in order for the American economy to prosper, there must be a world market for American products. In simplist terms, there isn't enough market demand for what America can produce if it looks only to its own shores as the market's limits. And America produces far more scrap than it can conceivably use -- now and in the foreseeable future.

Herbert Simon

The scrap processing industry recognized the need for exports long ago, especially in areas such as the West Coast, where there never was enough steelmaking capacity to use more than a small fraction of the scrap iron generated locally. That has been the situation -- is the situation today -- and will be the situation in the foreseeable future.

In order to meet the survival need, my company, and many others like it, undertook an intensive foreign market development program, and it worked. We were able to show that a small businessman, with a highly desirable product, could find a niche in the world market, could exist as a significant American exporter and could work for his own best interests as well as the best interests of the American economy by making positive contributions to the balance of trade. Scrap iron came from nowhere to become a major contributor to the plus side of American international trade -- one of few American industries making such a contribution.

What happened was that through individual initiative -- private entrepreneurship if you will -- American scrap became the world standard. It was American scrap that became desired internationally.

We made the needed investments, committed large amounts of capital, to be certain we could supply the needs of all customers -- foreign and domestic -- and we made sure to meet those needs. It is a fact beyond dispute that whenever a consumer wanted scrap iron, it was delivered at the market price and in the volumes desired. No American consumer ever was unable to buy all the scrap iron he wanted when he wanted it. As you know, such a statement is not possible from many other producers of American products, including steel producers. For example, during 1974, when steel went on allocation in many parts of the country, scrap was delivered to all who wanted it in the volume they requested. There has always been enough scrap to meet everyone's needs and then some -- there will be enough scrap to meet everyone's needs and then some in the foreseeable future.

In early 1973, when a few American steel mills found they had difficulty in making as much money producing steel as they felt appropriate, a problem developed entirely unrelated to scrap iron availability or price, but which vented itself in the context of the Export Administration Act. Specifically what happened was that these few mills found within the Short Supply Provisions of the Act a basis to induce the Federal Government to consider export controls. It was not a question of availability of the material. Rather, those mills felt that price control of their raw material would be in their best interests.

Unfortunately, big business did prevail and the export of scrap iron was limited.

Then, in 1979, the Findley Amendment was added to the Export Administration Act at the behest of certain mills and foundries. It singled out metallic scrap for special attention via specific advance monitoring provisions.

Herbert Simon

Monitoring of a freely traded commodity means, to the foreign buyer, that the American Government is going to control its availability. The monitoring process is viewed as simply the administrative vehicle to create the incriminating data to enforce that control action. Indeed, monitoring was advocated because it leads to a self-fulfilling prophesy, namely, in order to find out if controls are needed, monitoring is undertaken. Because monitoring, in the minds of foreign buyers, always leads to controls, buyers place orders for more than is needed to insure that their orders are recorded in advance of controls thereby increasing their chances of obtaining the needed material. Because monitoring now finds high order levels, the controls are found to be justified.

Fortunately, in 1980, when the new monitoring provision was tested, the petitioners failed to prove their case and the Department of Commerce said no to the request for monitoring. But in order to prevail, the scrap processing industry had to undertake a lengthy and very costly defense of its right to do business anywhere in the world while simultaneously the domestic demand for scrap was crumbling.

The defense was costly but the expense of the undertaking was far wider than the travel dollars and legal fees spent. First, America's reliability as a scrap supplier was now further challenged. Countries with investments in steelmaking facilities recognized the need to look for alternative sources of scrap iron -- and they did, to varying degrees and, second, countries with investments in steelmaking facilities began efforts to locate alternative sources of iron units such as direct reduced iron -- and many of them did. America became less and less thought of as a reliable supplier of scrap.

Our marketing efforts suffered and our customer relations suffered. And today, because of many other world situations, American scrap is facing strong new competition from British and Russian scrap in addition to the historic competitors.

As small businessmen, we have grown and prospered because we offer ourselves as part of our business. The small businessman can integrate himself and his business in a way no large businessman can because the business and the businessman are one and the same. And it is no different when that small business is scrap iron in the world market or groceries on the neighborhood corner. What we have to sell is integrity and our word and we have been successful in doing just that.

There is no reason for the Federal Government to exercise regulatory controls in the scrap export market; rather it is clearly in the best interests of America to maximize the export of what it does best and we produce the best scrap in the world. It is quality material, processed to the highest specifications in the world, by an industry which is the leader in the world. There is no more progressive, more sophisticated, more productive scrap industry anywhere.

As a small businessman, I ask that the Congress of the United States correct the adverse impact that mis-direction of the Export Administration Act has had on the scrap industry and the nation's interest in exporting scrap. There has never been a scrap iron shortage and the statute should no longer be usable to impose domestic price controls in the absence of proven short supply.

Thank you for your time and I am available to answer any questions you might have.

Senator GORTON. The second panel is Mr. Keach, Mr. Sieberson, Mr. Blackstone, and Mr. MacDonald.

Please come forward.

I think we will take you in that order.

Mr. Keach, wait for a moment and we will let the noise level decline a little bit.

STATEMENT OF KENNETH L. KEACH, VICE PRESIDENT AND MANAGER, INTERNATIONAL TRADE FINANCE, RAINIER NATIONAL BANK, SEATTLE, WASH.

Mr. KEACH. Thank you.

My name is Ken Keach, and I am the vice president and manager of international trade finance at Rainier National Bank here in Seattle. I will be giving my comments based on our active involvement with business customers across the State, particularly concentrating on comments that are made to us in our active involvement with small and medium-sized businesses.

The obstacles to exporting faced by small U.S. business firms fall into three main categories: the U.S. Government policy and regulations, the information resources and their availability, and the resulting global competitive posture of U.S. firms.

Let me first discuss Government regulations. The United States is one of the few nations in the world which taxes its citizens who are working overseas. This severely inhibits the placement of our own people overseas. Where double taxation of expatriots exists, as it does with the United States, it becomes prohibitively expensive to have Americans fill jobs overseas. Thus, overseas jobs are filled by local persons. Valuable experience never finds its way to a U.S. national or the head office of a U.S. exporting firm. Tax amendments in 1982, specifically regarding sections 911 and 913 of the IRS Tax Code, have helped considerably, but more is needed.

When a U.S. expatriot fills the position, knowledge is gained for the cross-selling of related and complementary U.S. products. The overall experience of the United States——

Senator GORTON. Excuse me. I am going to interrupt and ask you a question now.

You do make reference to the changes in the law which were passed last year, but you state that more is needed. What shortcomings still exist? How much of the problem was cured in 1982?

Mr. KEACH. It did help considerably. I talked to many of the corporations, especially the larger corporations who need to maintain staffs overseas. They insist that many times, by the addition of the taxes they have to pay under the amended taxes, their bids end up being twice that of British firms or other nations' firms. Therefore, when they cannot, without a great deal of effort, prove the extreme superiority of the service they are providing versus that of another country, they lose the contract.

It is felt that this becomes a very severe and inhibiting factor in getting service contracts in particular.

Senator GORTON. OK. Go ahead.

Mr. KEACH. Antiboycott legislation provides another obstacle for exporters. It presents ambiguous legislative limits while requiring intimidative reporting procedures. According to information that I have received, in 1982 this may not be the most cost-effective legislation. There were about 124 investigations, over half of which were dismissed with no infraction found. Of the 43 actual cases, only three settlements occurred and $500,000 worth of penalties were imposed. However, many corporations have reported to me that this legislation intimidates potential exporters with the specter of investigation. The type of reporting and constant awareness of any conversation that results is very difficult.

Other U.S. Government overseas business practices acts contribute other obstacles for small business. This includes the antitrust legislation and the Foreign Corrupt Practices Act. The implication and vagaries resulting from the antitrust laws promote prohibitive costs for legal expertise and advice. The Foreign Corrupt Practices Act of 1974 results in the unnecessary extraterritorialization of U.S. law and morality. This cripples the competitive posture of U.S. firms vis-a-vis their foreign counterparts, which remain unaffected.

The cost and loss of business to U.S. firms is extreme. This form of ethnocentric law may be counterproductive to our actual business interests and represents a limited understanding of the countries and milieu in which we must do business.

Finally, as has been discussed by other people here, the politicalization of foreign trade through foreign policy controls seriously harms U.S. marketing efforts. Short-term application of controls yields no benefits to the U.S. trade position. Instead, we lose contracts and erode previous relationships of trust. In the minds of most foreign buyers, the U.S. company is an unreliable supplier because of the sometimes capricious action of its Government as perceived by the foreign buyer.

My second point is that the U.S. Government can play a key role in addressing the widely perceived lack of informational resources for small business exporters. This problem takes on several forms. Initially, the problem is one of finding the appropriate overseas market to sell to and then determining the appropriate form of overseas representation or marketing method. Industry and Government sources are available to help, but the uninitiated business person, especially new business people in small- and medium-sized businesses, often lack awareness of such resources.

I believe that a further strengthening of International Trade Administration activities is needed. The small business person at first may need a great deal of help in finding the opportunity and in bringing the opportunity to completion.

An additional impediment to available information is a lack of active support for the U.S. business person overseas from our foreign embassies and consulates. U.S. business persons overseas are not getting the assistance those agencies were designed to provide. The U.S. business owner faces these obstacles alone, at least so he feels many times. This is especially true when more than one U.S. company is trying to sell into a foreign market. Then, the U.S. Embassy has its hands tied because, in trying to be fair to all U.S. companies they can help none.

Many of the U.S. business persons' foreign counterparts enjoy the help of a very well-organized and integrated foreign commodity marketing board, and non-U.S. Embassy personnel are often very competently trained in the knowledge of business, as well as in applying political pressure to aid their national in getting the deal.

U.S. products are good, but having "the better mousetrap" is not sufficient. The solution is in coordination of the marketing, finance, labor, and distribution, with Government assistance and guidance in an integrated form so as to give the American company the competitive edge, or to at least meet the type of competition that is alive and working for foreign competitors in the world.

My third point results from the combined effects of prohibitive legislation and the lack of information. This is, namely, a weak competitive posture in the global marketplace. Small and medium-sized U.S. businesses cannot gain any advantage. And, faced with the government-subsidized or enhanced bids from other countries, U.S. firms just cannot win. Our legislators are due congratulations for the passage of the export trading company legislation. This is an important first step for the integration of U.S. small and medium-sized businesses.

Other factors remain, including the inability of U.S. firms to receive what is considered to be adequate credit assistance. Where the U.S. exporter is unable to provide matching financing, we will increasingly find ourselves replaced as customary supplier for important markets.

The U.S. exporters that we bank are not insisting on further subsidized export financing; they simply do not want to be undermined by other nations' programs. Most major American businesses do not want a subsidy from government.

However, since they are faced with competition from companies and countries that do subsidize manufacturing exports, our Government needs to address how we can neutralize or equalize the foreign corporation's advantage. In this regard, I am sure you have already heard some comments about the need for a closer support of the Exim bank. I also believe several people have alluded to the unnecessary and innumerable complicated problems associated with different forms of accessing FCIA insurance and the SBA export loan program. To access these programs involves extensive form filing and reporting mechanisms beyond the capacity of most medium and small-sized firms. Simplification of these procedures is necessary to increase their use.

As stated at the beginning, the international sales activities and financing of U.S. business is no longer an insignificant activity. It is one which has to be addressed in an integrated fashion so as to allow us to compete in world markets. Many foreign nationals are fond of reminding us in the U.S. international business sphere that it is we, through our own legislation, that have done the most to disadvantage ourselves.

We would suggest, in conclusion, that, while some progress is being forged, there is a lack of political leadership on the national scene in support of free trade. We need leadership which can integrate the various phases of American business, labor, and government to help us compete as a nation-state.

Thank you for allowing us to make comments in this regard, Senator.

Senator GORTON. Thank you.

Mr. Sieberson, please proceed.

STATEMENT OF STEPHEN C. SIEBERSON, ATTORNEY AT LAW, CARNEY, STEPHENSON, BADLEY, SMITH & MUELLER, SEATTLE, WASH.

Mr. SIEBERSON. Thank you, Senator.

My name is Stephen Sieberson. I am an attorney with the Seattle law firm of Carney, Stephenson, Badley, Smith & Mueller. Our firm has a variety of international clients, including local firms that are involved in exporting.

My remarks today are based upon my own personal experiences and those of our clients, but I also have sought out ideas from other Seattle lawyers and from business friends who are active in international trade or trade financing.

In the written statement that I have submitted to this committee I have given some examples of what I believe the U.S. Government is doing well and what it should continue to do in support of exporting. I have also listed several ways in which the Government seems to be shooting itself in the foot.

Finally, I have proposed six ways in which the Federal support of exports can be enhanced. A lot of these are similar to the points that Mr. Keach has raised, and I do not want to take time to go through all of the items in my written statement. Rather, what I would like to do is focus on just two or three points. While I would normally prefer to accentuate the positive, I hate to pass up a chance to address three matters that I consider are seriously damaging to our export industry.

First is Operation Exodus. Let me join the chorus of critics of this program. The name of the program itself suggests a comparison to the exodus of the Old Testament. In this situation it is our exporters who are crying, "Let my exports go." Clearly, the program has produced minimal benefit as compared to the cost and the climate of hostility that it has created.

My second point follows from this, and that is that our Government agencies tend to get carried away in their zeal to prevent infractions from taking place. The Internal Revenue Service is notorious in its aggressive dealings with taxpayers, but we, unfortunately, see a similar attitude in the officials who administer the export laws.

If we look at the countries of Western Europe or Japan, we can see that government there tries to enhance the business climate and not antagonize it. These are civilized countries with sufficient public morality; yet, we seem to think that the same sort of cooperation between our Government and our business is somehow suspect. We should rethink our entire system of export controls and ask whether restrictions, classifications, inspections, and licensing requirements really serve any meaningful purpose.

I submit that the only restrictions at all should be those directed at export items which would have a serious adverse effect on our national security. Similarly, the countries which we single out for general trade sanctions should be only those few nations which have clearly demonstrated their inability to dwell peacefully in a civilized world.

Finally, I would join Mr. Gellert and Mr. Keach and others here today in making a plea for consistency in our country's international trade policy. During the years 1980 and 1981 I had the experience of living in Western Europe and working as an international finance lawyer. In my business dealings during those years I often got into discussions with European businessmen on the subject of the reliability of the United States as a trade partner. The consensus of opinion among Europeans is that our Government is making a serious mistake by trying to use trade as a weapon in its foreign policy arsenal. The trade sanctions or embargoes which every administration seems to want to impose from time to time to flex its international muscle are seen not only as ineffective to achieve their short-term goals, but as damaging to the U.S. position in the commercial world overall.

This attitude has been recognized by none other than George P. Schultz, our Secretary of State. Three years ago when he was in private business he severely criticized erratic export controls stating that, "Major commercial relationships cannot be turned on and off like a light switch."

In Western Europe international trade has been going on for hundreds of years, and governments know that regardless of changing social policies at home, international policies must not become a political football. Business deals are made to a great extent on the basis of the integrity of the parties, and integrity arises only from predictability and consistency.

Except in the rarest of circumstances, the United States should not impose trade sanctions as a tool of persuasion or punishment. As Congress looks at the Export Administration Act, a premium should be put on limiting the discretion of the administration, whether Republican or Democratic, to interfere with the free flow of international trade.

Thank you.

Senator GORTON. Thank you, Mr. Sieberson.

In both your case and that of Mr. Keach, your statements will be included in the record in full following the oral presentations of this panel.

Mr. Blackstone, you may proceed.

STATEMENT OF ROBERT A. BLACKSTONE, ATTORNEY AT LAW, DAVIS, WRIGHT, TODD, RIESE & JONES, WASHINGTON, D.C.

Mr. **Blackstone**. Mr. Chairman, my name is Bob Blackstone.

It is a pleasure for me to be here this afternoon to share with the committees my views on obstacles to exporting faced by small businesses.

We are rapidly coming to realize how interdependent our economic well-being is with that of the rest of the world. Our ability to develop and maintain export markets for U.S. products is a vital component of our future growth.

I am a partner in the Seattle-based law firm of Davis, Wright, Todd, Riese & Jones, and for the past year and a half have been the partner in charge of the firm's Washington, D.C., office. During this time I have had an opportunity to observe firsthand some of the many barriers to exporting faced by our clients, most of whom are small and medium-sized companies located in the Northwest.

I have been particularly involved with the difficulties faced by several of our clients engaged in the manufacture of "high tech" equipment in attempting to navigate their way through the maze of U.S. export regulation. I would like to address most of my testimony this afternoon to that issue.

The survey taken by the Senate Small Business Committee last year on obstacles to exporting revealed that after lack of information, the next most frequently identified obstacle was regulation. The survey shows that small businesses interested in exporting are deterred by the complex and confusing nature of the export regulations, and the cost, time, and paperwork involved in attempting to understand and comply with them.

There are five basic changes I believe we need to make:

One, focus our regulatory and enforcement efforts much more narrowly on those critical technologies in which the United States has a strategic lead over the Eastern bloc, rather than diluting our efforts by attempting to regulate as many products as we currently do.

Two, we need to place much greater emphasis on meaningful and enforceable multilateral controls rather than unilateral controls, which in most cases are ineffective in achieving the desired result and serve only to strengthen foreign competitors at the expense of U.S. industry.

Three, we need to streamline the licensing process so as to reduce the time lag required to obtain both licenses and reliable information about whether a license is required and we need to make licensing information and assistance more accessible to small businesses.

Four, we need to require that the agencies administering export regulations accurately assess foreign availability of products for which U.S. licenses are required and apply that information so as to not place U.S. companies under unnecessary and ineffective licensing restrictions.

Finally, five, we need to severely restrict the circumstances under which foreign policy export controls, particularly unilateral controls, may be imposed.

Let me elaborate on some of those five concepts a little more.

At the present time we attempt to regulate far too many products. As a result, we actually end up exercising meaningful control over too few products, and I suspect not over the most critical ones.

For example, earlier this year the Commerce Department announced that it had reached a consent agreement in a case in which a Japanese company was accused of allowing a reexport in 1976 of certain American-made products to Cuba. What were those products? Video tape recorders sold to the state television station in Havana. I suggest that we have far more important technologies to direct our enforcement efforts toward than video tape recorders going to Cuba.

Because we attempt to regulate such a broad range of goods, we diffuse our enforcement resources and overload the licensing bureaucracy, thus distracting them from focusing on truly critical technologies. What we do accomplish, however, is to impose significant burdens on U.S. exporters of noncritical products. This places them at a very real competitive disadvantage relative to their foreign competitors, who are not subject to anywhere near the same breadth and complexity of export regulation, even for those products which are supposedly multilaterally controlled.

What can be done? First, require the Department of Commerce and the Department of Defense to completely review the present commodity control list, starting from a zero base, and include on the revised list only those items which are truly of current strategic importance to the United States and which are not, in fact, available from foreign sources.

We should mandate that such review include meaningful input from the industries affected. Given the present pace of technological advancement, require that the list be meaningfully reviewed at least semiannually, if not quarterly, rather than annually as under present law.

Next, we must recognize that the United States can no longer attempt to impose its conception of export controls unilaterally with any realistic hope that they will be successful. Only through meaningful unilateral controls, uniformly enforced, can we achieve our objective of preventing, or at least significantly delaying, Soviet acquisition of our critical technologies.

The most frequent result of unilateral export controls is that U.S. companies lose business to their overseas competition and the Soviet Union gets the desired equipment, anyway. That result makes very little sense.

Next, we need to streamline the licensing process. The operation of our existing export licensing process is a source of great frustration to the exporting community, as we have heard today. Although the process has always been cumbersome, the problem has become much more acute with the institution of Operation Exodus in the fall of 1981. The result has been a substantial increase in the workload of the Office of Export Administration that it simply was not equipped to handle.

Another problem with the current situation is the length of time it takes to obtain an advisory opinion from the Department as to whether a given product requires a validated license and, if so, what CCL category it belongs in. This problem is particularly acute for small businesses. Anyone who has ever attempted to work with the commodity control list knows what a frustrating experience it can be. It is a complicated, highly technical document with more than its share of exceptions, footnotes, and interpretations that often make its application to a particular product exceedingly difficult.

While there is no doubt that the Commerce Department has recently taken some steps to streamline the licensing process, there is still significant room for improvement. I urge that the following actions be considered in connection with the reauthorization of the Export Administration Act.

One, legislatively mandate that the Department respond to requests for advisory opinions within 30 days, or 60 days for truly exceptional cases.

Two, amend the legislation to reduce the current statutory processing time for validated license applications by at least one-third.

Three, decentralize processing of validated license applications for free world destinations to Commerce district offices, where Commerce employees can more easily communicate with exporters and better understand their product line.

Four, establish a toll-free telephone number for exporters to use to obtain answers to general licensing issues, and have it staffed such that west coast exporters can utilize it during their normal business day.

Finally, I believe we need to require meaningful assessment of foreign availability. The Export Administration Act of 1979 directed the Department of Commerce to assess foreign availability of goods for which the United States requires validated license. The act clearly requires that if goods are available from foreign sources, such that the requirement of a validated licecse would be ineffective in achieving our objectives, a validated license may not be required unless the President specifically determines that export controls must be maintained, notwithstanding foreign availability.

Despite this mandate, the concept of foreign availability as a limitation on export licensing continues to be a hollow shell, much to the detriment of U.S. exporters. Foreign availability must be made a cornerstone of our export regulatory scheme. In the long run, ineffective restrictions on our ability to export will do us far more harm.

Thank you.

Senator GORTON. Thank you, Mr. Blackstone. Your entire written statement will also be included in the record following the oral presentation of this panel.

Mr. MacDonald?

STATEMENT OF ROBERT MacDONALD, PRESIDENT, ALF. CHRISTIANSON SEED CO., MOUNT VERNON, WASH.

Mr. MacDonald. Thank you, Senator.

My name is Robert MacDonald. I am president of Alf. Christianson Seed Co., with headquarters in Mount Vernon, Wash. My business and working career with that company extends 1 year less than one-half century. I have been president of that company since its incorporation 25 years ago.

My company, by most standards, would qualify as a small business. We, however, reserve to ourselves a stature of importance inasmuch as we, as a vegetable and seed grower, are providing for mankind's basic needs—vegetables—and we are of some consequence internationally in the vegetable seed trade.

In order of importance, within our experience we would categorize obstacles to exporting as follows:

One, capital; that is, working capital requirements.

Two, foreign exchange rate disparities.

Three, overt or covert restrictive import practices on the part of some of the countries that we sell to.

I shall deal with my No. 1 category first: capital; that is, working capital requirements.

During my almost one-half century of commercial vegetable seed growing, I have lived through sustained periods of toil, sweat, and fear—fear of the possibility of tomorrow's or next year's insolvency. That is not to say I have not smelled the flowers or vegetable seeds along the way nor have not managed to have some fun en route.

The need or requirement of adequate working capital was my ever-present concern. Attributable to our substantial progress of more recent years in worldwide marketing has been the tax-deferred provisions of Internal Revenue since its enactment in 1971.

Unfortunately, subsequent diminutions in the tax deferment considerations for DISC—Domestic international sales corporations—earnings in international trade have substantially reduced the benefits formerly derived from DISC enactments.

Funds accrued from DISC tax deferments have been of considerable benefit in research and development, in meeting added costs pertaining to aggressive export sales marketing and in general providing for needed working capital.

I would strongly urge the Government of the United States to add to, rather than take away from, the tax-deferred benefits extended to DISC corporations.

We will now direct our attention to the second of our major obstacles to export marketing: foreign exchange rate disparities.

I think all of us are aware of the fact that the high American dollar is making it extremely difficult for all of us exporters to sell our products overseas. In the past couple years the difference between the currencies of the United States and most of our trading partners has deteriorated to a great extent. In some of the countries, France in particular, it is extremely difficult to be able to compete with the Common Market countries. This has been true with Japan and most of the countries in the world. I will not go into the exact figures here, but I think we are aware of that. What the Senate can do about this, I am not sure, but it is a real problem that I am sure that all exporters are having to contend with at this time.

There is one special case as far as money is concerned, and this is Mexico. Mexico is our neighbor, and they eat lots of vegetables. They not only have depreciated their currency—a year ago, a little over a year ago, it was 25 pesos to the dollar, and not too long before that it was 8 pesos to the dollar, but now it is 150 to the dollar. Worse than that, our customers down there have lots and lots of pesos, but they cannot get any American dollars from the Mexican Government with which to buy more seed. We do not really feel like shipping seed down there unless we can get some American dollars back.

Senator GORTON. Has that policy continued since the inauguration of the new President? Do they still have very restrictive exchange controls?

Mr. MACDONALD. Yes. It is our understanding that there is only a limited amount of American dollars available, and the government says who those dollars can go to. The approximately $1 billion that I believe the United States has given to Mexico for the oil that we are buying has gone for direct food—or a big share of it anyway has gone to a Mexican governmental agency that buys food. That would be corn, beans, wheat, and that sort of thing.

We feel that vegetable seed should certainly come under that program. Some of the people in the Agriculture Department, and I believe the Commerce Department, are working on that program at the present time.

At any rate, a situation of this kind is going to stop foreign trade, as you can understand. Of course, I think all of us are concerned about the tradition of many of the developing countries, certainly Argentina and Brazil and a number of the countries in South America, which are in very desperate shape.

The customers down in those countries have paid their bank on letters of credit, but the government will not release the American dollars to pay the American producer of seed. This is certainly an unfortunate situation.

It is apparent that normal commercial relationships between debtor and creditor nations cannot endure with currencies at such disparities. I think that is a fair statement.

I will now address my third category of obstacles requiring remedy to a greater or lesser degree; namely, restrictive practices, overt or covert, on the part of our trading partners.

We had a problem with one of our good trading partners, Japan, whereby overrestrictive quality standards relating to some of our crops threatened our continuing doing business under those standards. It was almost impossible to ship seed in there because actually they had laws saying there could be no soil in seed at all, and this is almost an impossibility. If you say a tenth of 1 percent or a twentieth of 1 percent, or something like that, you could live with that, but zero, you cannot live with that.

They had another restriction on a resting body of a fungus which is worldwide—*a sclerotia*—that is not a problem in any country in the world.

At any rate, we met that problem in collaboration with Washington State University and their senior pathologist, Dr. Richard Gabrielson, by traveling to Japan and tackling this problem at its source.

By the coordinated efforts of our Japanese trade, Washington State University, the American Seed Trade Association, the Oregon Seed Trade Association, and ourselves partially eliminated this problem with the Japanese authorities.

Canada, South Africa, and Australia also have weed or phytosanitary restrictions that are unduly restrictive. It is our understanding that these restrictions are part of their seed laws and that it takes legislative action to change them. We are aware of the restrictions and have been able to ship into these areas successfully.

Before I conclude my remarks and ask for your questions, I would like to take a bow on behalf of my company, its employees, and all of those who provided the effort resulting in our being given the President's "E" Award. In the words of Mr. Malcolm Baldrige, Secretary of Commerce, "in recognition of outstanding contributions to the increase of trade abroad."

Thank you.

Senator GORTON. Your company does deserve congratulations for that award. You have obviously been very, very successful.

Mr. Keach, you were willing to take on a question which I asked of the earlier panel. I would like you to expand a little bit on the kind of changes you feel necessary in the Foreign Corrupt Practices Act for appropriate and equal American trade competition.

Mr. KEACH. My experience has been, before coming here to Seattle, has been working for a major American bank and a British bank overseas. It has been the comment of many major American corporations that are involved in doing business that this type of legislation has caused them great difficulty in meeting the normal forms of competition that are afoot in the world.

Without going into specifics, it is very difficult, Senator. You can discuss it case by case, but I shall recall a time when this law was passed that one of my good French friends arrived at my door, knocked on my door with a bottle of champagne and announced to me how incredibly happy he was that the United States had single-handedly destroyed its commercial markets in one fell swoop.

In that regard, he said that you have to be able to do business, as you must be able to speak the language of a country, in the way that it is conducted in that country.

I do not wish to defend immoral practices in any way, shape, or form, but many countries of the world's perceptions of morality, their perceptions of the way that business is conducted based on their historical and cultural experience is very different from that of the Judeo-Christian ethic which pervades U.S. law and Western thinking. It makes no more sense for us to tell non-Americans in their own country that they should behave according to our standards than for us to be told that we must behave in the U.S.A. as they do in their country, with respect to their laws and thinking procedures.

Senator GORTON. Engaging in business in the normal and customary way of the country in which the business is conducted should be the general rule from your perspective?

Mr. SIEBERSON. Yes, Senator. May I comment on that as well?

My experience in Europe with the business people I have dealt with there was similar to his with the Frenchman. They find the Foreign Corrupt Practices Act as either highly amusing or just inept. When Europeans do business overseas, they learn to speak the language well. They think Americans are either insensitive or boorish or something for insisting that all business be conducted in English. In the same sense with the Foreign Corrupt Practices Act, the European businessmen scratch their heads and say, "Why would you want to do that?" They just do not understand it.

As I said earlier, I think the European countries are moral nations; yet, they do not feel it is necessary to impose their stamp of morality everywhere they do business.

Senator GORTON. I have one other question on which I think each of you may wish to comment, but I will start with you, Mr. Blackstone.

You listed several changes or amendments that you felt appropriate in the Export Administration Act. In fact, of course, the Export Administration Act is going to be before the Congress this year. It requires reauthorization. You all know that we must take action in that respect.

If you and each of the rest of you had just one change you could have made in the Export Administration Act, what would that change be? What is your No. 1 priority?

Mr. BLACKSTONE. It would be to legislatively mandate that the appropriate regulatory agencies focus only on the technologies that are truly critical, in the military sense, to maintaining our security, instead of trying to regulate everything that has a microprocessor in it.

Senator GORTON. Does anyone else want to take on that one?

Mr. SIEBERSON. I would be happy to tell you what my one item would be. That is that the imposition of embargoes or trade sanctions should be severely limited. The administration should not just be able to do it by executive fiat, but it should only come out of a hearing process, let's say, before the Senate. That way we can keep this under control.

I think the administrations in the past have used far too much whimsy to impose these things, and they just do not work.

Senator GORTON. Mr. Keach, do you have a comment?

Mr. KEACH. I would agree with Mr. Sieberson that it is extremely important not to politicize trade except in cases of national emergency. Then, of course, all actions are under review. Otherwise, I believe this is one of the greatest harms we have had to our commercial patterns.

Senator GORTON. Mr. MacDonald, is this an act with which you have come in contact?

Mr. MACDONALD. Not really, but I recall when the United States stopped shipping soybeans to Japan that this really caused a stir over there. The United States, they decided, was not a dependable supplier. This is a very, very serious matter.

Senator GORTON. It is interesting that your sets of priorities are perhaps a little bit different than those that Mr. Fluke outlined. You heard his concern over the repetitive and apparently papermaking process of continually having to relicense the same kind of export to the same kind of country.

How important is that restriction from the point of view of your clients? Would that be an important change to the law?

Mr. **Blackstone**. Senator, the problem there is that the present statute has time limits in it, and they are just not being adhered to. Again, this is a direct result of attempting to try to regulate far too many products. For the most part, most of those licenses are granted. I saw some statistics recently which indicated that in 1979 and 1980 the Export Administration Office processed something like 75,000 license applications, of which more than a third were for products going to basically the Western European countries and Japan, Australia, and New Zealand. Of the licenses for products going to those countries, which are the COCOM countries, not one was denied. There were 30,000 licenses, 30,000 sets of paper, and virtually none of them were denied.

It seems to me that it verges on the ridiculous to require American exporters to go through that process when the licenses are invariably granted anyway.

Senator **Gorton**. Therefore, we should be licensing far fewer types of exports?

Mr. **Blackstone**. Exactly. I do not think we should be concerned licensing about digital multimeters from the Fluke Co. We ought to be much more worried about critical military technology that may be seeping out of the country. That does not include a microprocessor embedded in one of Mr. Fluke's machines.

Senator **Gorton**. Have any of the three of you who represent others represented clients whose exports licenses have been rejected as opposed simply to being delayed?

Mr. **Keach**. Most of the people to whom I have talked have just had the problem with delay or the seizure of goods in the Operation Exodus which has caused them to miss their expiring dates on letters of credit or miss contract completion dates and then lose subsequent followup deals. However, it has not been a problem, as has been stated before, that licenses have been denied, so much as the procedure made it impossible for them to successfully complete the bids or the contracts.

Mr. **Sieberson**. I could point out that although I do not believe any of our clients have had licenses denied, one thing that has not been said here is with the amount of detail you give in a license, if later on before the transaction is consummated there are some changes, you may have to go reapply for your license. You may have one license application pending and the deal changes to some extent, and so you may have to reapply. You are spinning your wheels to a great extent.

Senator **Gorton**. I would like to thank the four of you for taking time to come here this afternoon. I can say that I think some of the suggestions we have heard this afternoon will, hopefully, bear fruit in the immediate future in the reauthorization of this act.

Thank you very, very much.

[Material follows:]

"OBSTACLES TO EXPORTING FACED BY SMALL BUSINESS"

Statement by Kenneth L. Keach
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Senate Small Business Committee, Sub-Committee on Export Promotion and Market Development and the Senate Commerce and Transportation Sub-Committee on Science.

February 11, 1983

The United States has now come of age. We have learned the lesson other countries learned years ago: "You must export to live." The statistics are a strong indication of this. Around five million American jobs depend upon export. It is estimated that every $1 billion of exports supports approximately 30,000 jobs. Clearly, this activity is no longer a peripheral aspect of the U. S. economy.

Still, less than one in ten U. S. manufacturers sell any of their products abroad. Apathy and lack of awareness of the positive results from exporting, combined with a significant number of other obstacles, prevent the small business from marketing overseas.

The failure to achieve significant additional U. S. exports is the obvious cause of our balance of payments deficit. The U. S. has accumulated a $154 billion merchandise trade deficit over the past six years, while Japan boasts a $76 billion surplus. As Japan, West Germany, Korea and France enhanced their shares of the world market, the United States' position declined. Our global competitors have out-finance, out-organized and out-maneuvered us.

The changes needed to foster export encouragement for small businesses must come as a cooperative effort of government and the private sector. This type of effort is currently enhancing the trade position of our major competitors: integrated nation-states. Today, foreign nation-states converge their businesses, government and financial institutions to offer an integrated package to compete against the lone U. S. business person.

The issue is an important one. Today's hearing attests to that. It is imperative that we realize and break down the obstacles to exporting.

The obstacles to exporting faced by small U. S. business firms fall into three main categories: 1) U. S. government policy and regulation; 2) information resources and their availability; and 3) the resulting global competitive posture of U. S. firms.

True, numerous government agencies and trade associations exist to promote exporting. Still, there is a real and perceived need for helpful legislation; for easily obtainable, accurate information in international opportunities (and methods of accessing those opportunities); and an equal opportunity to compete in the global markets on a fair and competitive basis.

Let me first discuss government regulations. The U. S. is one of the few nations in the world which taxes its citizens who are working overseas. This severely inhibits the placement of our own people overseas. Our country loses opportunities. Exporting savvy is most efficiently gained through the "hands-on experience" of working overseas. Invaluable knowledge is brought back to the nation. Often new exporting efforts result. Where double taxation of expatriots exists, as it does with the U. S., it becomes prohibitively expensive to have Americans fill jobs overseas.

Thus, overseas jobs are filled by local persons. Valuable experience never finds its way to a U. S. national or the head office of a U. S. exporting firm. Tax amendments in 1982, specifically regarding Sections 911 and 913 of the IRS Tax Code, have helped considerably, but more is needed.

When a U. S. expatriot fills the position, knowledge is gained for the cross-selling of related and complimentary U. S. products. The overall experience of the U. S. nation in international markets is thus strengthened. We can improve this situation by raising the income limit at which U. S. expatriots experience double taxation. Or, we could eliminate double taxation altogether and/or provide incentives for U. S. firms to send more U. S. employees abroad.

Anti-boycott legislation provides another obstacle for exporters. It presents ambiguous legislative limits while requiring intimidative reporting procedures. In 1982, results indicate that this may be less than cost-effective legislation. There were 124 investigations. Over one-half were dismissed with no infraction found. Of the 43 actual cases, only three settlements occurred and $500,000 worth of penalties were imposed. This legislation intimidates potential exporters with the spectre of investigation.

Other U. S. government overseas business practices acts contribute other obstacles for small business. These include the anti-trust legislation and the Foreign Corrupt Practices Act. The implication and vagaries resulting from anti-trust laws promote prohibitive costs for legal expertise and advice. The Foreign Corrupt Practices Act of 1974 results in the unnecessary extra-territorialization of U. S. law and morality. This cripples the competitive posture of U. S. firms vis-a-vis foreign counterparts that remain unaffected. The cost and loss of business to U. S. firms is extreme. This form of ethno-centric law may be counterproductive to our actual business interest and represents a limited understanding of the countries and milieus in which we must do business.

Finally, the politicalization of foreign trade through foreign policy controls seriously harms U. S. marketing efforts. Short-term application of controls yields no benefits to the U. S. trade position. Instead, we lose contracts and erode previous relationships of trust. In the mind of most foreign buyers, the U. S. company is an unreliable supplier because of the sometime capricious action of its government.

My second point is that the U. S. government can play a key role in addressing the widely perceived lack of informational resources for small business exporters. This problem takes on several forms. Initially, the problem is one of finding the appropriate overseas market to sell to and then determining the appropriate form of overseas representation or marketing method. Industry and government sources are available to help. But, the uninitiated business person lacks the awareness of such resources.

A further strengthening of the International Trade Administration activities of the Department of Commerce is needed. The Seattle office under Eric Silberstein is one of the few such offices that actually helps business people, leading them by the hand through the very complicated aspects of becoming involved in international business. Some of the pilot programs tried here in Seattle may have national application. The small-business person at first may need a great deal of help in finding the opportunity and in bringing the opportunity to completion.

An additional impediment to available information is a lack of active support for the U. S. business person overseas from our foreign embassies and consulates. U. S. business persons overseas are not getting the assistance those agencies were designed to provide. The U. S. business owner faces these obstacles alone. This is especially true when more than one U. S. company is trying to sell into a foreign market. Then, the U. S. Embassy has its hands tied, because in trying to be fair to all U. S. companies, they can help none. Many of U. S. business persons' foreign counterparts enjoy the help of well-organized and integrated foreign commodity marketing boards. And, non-U. S. Embassy personnel are competently trained in the knowledge of business, as well as in applying political pressure to aid their national in getting the deal. U. S. products are good, but having "the better mousetrap" is not sufficient. The solution is in coordination of the marketing, finance, labor and distribution, with government assistance and guidance in an integrated form so as to give the American company the competitive edge - or to at least meet the type of competition that is alive and working for foreign competitors in the world.

My third point results from the combined effects of prohibitive legislation and the lack of information. This is, namely, a weak competitive posture in the global marketplace. Small and medium-sized U. S. businesses cannot gain any advantage. And, faced with the government-subsidized or enhanced bid from other countries, U. S. firms just can't win. Our legislators are due congratulations for the passage of the Export Trading Company legislation. It is an important first step for the integration of U. S. small and medium-sized businesses.

Obstacles . . . add 5--

Other factors remain, including the inability of U. S. firms to receive adequate export credit assistance. Where the U. S. exporter is unable to provide matching financing, we will increasingly find ourselves replaced as customary supplier for important markets. The U. S. exporters that we bank are not insisting on subsidized export financing, they simply do not want to be undermined by other nations' programs. Most major American businesses do not want a subsidy from government. However, since they are faced with competition from companies and countries that do subsidize manufacturing exports, our government needs to address how we can neutralize or equalize the foreign corporation's advantage. In this regard, I'm sure you have already heard about the need to examine more closely our support fo the Ex-Im bank. Also, you've heard about the unnumerable and complicated problems associated with accessing FCIA insurance and the SBA export loan program. Access to these programs involves extensive form filing and reporting mechanisms beyond the capacity of most firms. Simplification of these procedures is necessary to increase their use.

Additional problems also remain, including the inability of U. S. firms, small or medium-sized, to service products overseas. Another hurdle is the obvious need to focus on market share instead of short-term profitability. Also, a lack of special export assistance funds means no research and development, no foreign marketing analysis, no modification of products, and no meeting the needs of the foreign market. The result is no sales.

As stated at the beginning, the international sales activities and financing of U. S. business is no longer an insignificant activity. It is one which has to be addressed in an integrated fashion so as to allow us to compete in world markets. Many foreign nationals are fond of reminding us, in the U. S. international business sphere, that it is we, through our own legislation, that have done the most to disadvantage ourselves.

We would suggest, in conclusion, that, while some progress is being forged, there is a lack of political leadership on the national scene in support of free trade. It is leadership which can integrate the various phases of American business, labor and government to help us compete as a nation-state and thereby raise the standard of not only our nation, but the world, through providing goods and services at the best and fairest price.

Thank you.

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Attorney at Law

Before the Senate Small Business Committee Field Hearing

On "Obstacles to Exporting Faced by Small Businesses"

February 11, 1983

Seattle, Washington

Today, more than ever before, a businessman facing obstacles will turn in frustration to his lawyer for help. When those obstacles are in the field of exports, the businessman may discover that his lawyer can do little more than share in the frustration.

Lawyers are supposed to be problem solvers. The tools that a good lawyer uses in dealing with any problem are the analytical ability to discern all of the facets of a situation, the technical skill to determine what the applicable law is, and the common sense to devise a solution that is acceptable to all of the parties.

Unfortunately, in export matters the lawyer may well feel as though he has grabbed the wrong tool kit. He is like the auto mechanic trying to tighten a 19 millimeter bolt with a three-quarter inch wrench. Despite his efforts, he only manages to skin his knuckles or damage the bolt.

Any sales transaction involves many components -- market analysis, product assembly, price determination, packaging, transportation, method of payment, servicing, and so on. An export transaction has all of these and much more -- export licensing, import duties, customs inspections, currency exchange, foreign laws, foreign languages, and foreign bureaucrats. Like snowflakes, no two export transactions will ever be exactly alike, and generalizations must be cautiously drawn. Yet, observation does reveal some common characteristics.

The following comments are based upon our own experiences, those of fellow attorneys, and those of clients and business friends. Not surprisingly, the ideas mirror both the results of the excellent survey published on July 30, 1982 by the Senate Committee on Small Business, and the testimony at hearings of the Committee in Spokane on October 21, 1982.

We can observe first what the United States Government is doing well; second, what it is doing wrong; and third, what more it can do.

A. Programs the U.S. Government Should Continue

Looking first at the positive, there are several things the Government is doing that are indeed supportive of exporting:

1. Eximbank Financing. In pure theory, no one feels that Eximbank financing packages are desirable. Open competition is the ideal situation; however, reality dictates that for the present time American business must be permitted to maintain parity with government-subsidized foreign competitors. Eximbank is simply the mechanism for fighting fire with fire, and its programs must continue for now.

2. Export Trading Company Act. Although few people see this as a panacea, the ETCA is certainly a step in the right direction. We will be surprised if this new legislation actually spurs development of trading companies as significant as the "sogo shosha" in Japan. Nevertheless, the possibilities for broader participation by banks, the antitrust compliance certificate process, and the expanded activity of the Department of Commerce can only help U.S. export activity.

3. Small Business Administration Program. The SBA's new Export Revolving Line of Credit program is still unproven, but this, too, is a positive development. By adhering to the standard SBA approach of guaranteeing a bank's line of credit to an exporter, the new program supports private enterprise without replacing it.

4. Department of Commerce Information Programs. On January 17, 1983, the Department's Seattle office of the International Trade Administration held an all-day seminar on the Export Trading Company Act. This was an excellent meeting, and it was apparent that the ITA has a talented staff in Seattle. More of this type of activity should be encouraged to create ever increasing export awareness in this region.

5. Senate Committee Hearings. Hearings such as this one and its Spokane and Washington, D.C., predecessors last year should be held regularly so that the Senate can keep its finger on the pulse of exports. There is no one-time cure to be discovered; rather, our country's export policies must be constantly evolving. The Senate's attention must not fade, and through its activity the export mentality can be fostered and continually renewed.

B. How the Government Harms Exporting

Although the preceding items illustrate that Government can help exporters, many businessmen feel the Government's failures outweigh its successes. Here are some examples of misdirected export policy:

1. Operation Exodus. Although none of our clients have had shipments held up by U.S. Customs inspectors searching for forbidden technological fruit, everyone is angry about this program. The statistical results of Operation Exodus leave no doubt that it is doing more harm than good. In Seattle, between June and December of 1982 there were 27 detentions of goods, eight seizures of products, and no prosecutions. Despite its good intentions, the Government should heed the call of Rep. Don Bonker and cease this activity.

2. Export Licenses. Exporters whose products are controlled have learned to live with the delays incurred while waiting for their licenses. But they ask a simple question: Why require licenses at all? Products with a significant effect on national security are so rare that licensing to protect our national interests should affect only a few businesses. The present approach constitutes overkill, and it is costing our exporters time and money.

3. Eximbank Budget. Eximbank financing is a program that pays for itself. It should not be necessary for the annual Eximbank budget to be subjected to Congressional approval as if it were a drain on the U.S. Treasury.

4. Thresholds. Small businesses wishing to enter the field of exporting for the first time may find themselves in the "Catch 22" situation of being denied Eximbank or FCIA assistance because they have no experience in exporting or because they are too small. This situation stymies what everyone professes to be desirable, namely, encouragement of new exporting activity. Support of small businesses with no export track record may mean greater risk for the Government, but the risk may well be necessary to achieve any real increase in our export trade.

5. Misplaced Zeal. Too often Government agencies have patterned themselves after the Internal Revenue Service and have adopted an extremely aggressive posture in enforcing regulations. Such zeal must now be channeled into support of our export business, even if it means that some violations go unprosecuted. Let us emulate the Western European nations and Japan, where government cooperation with business is acknowledged as a benefit to the public at large. We note with pleasure the fact that under the Export Trading Company

Act it is the Department of Commerce rather than the Department of Justice which is given primary responsibility for antitrust exemption certification.

C. New Directions For Governmental Involvement

There are many ways in which the Government can expand its support of exporting. The following are a few brief suggestions.

1. Information Services. If direct financial subsidies by Government are controversial, Government support through information services is not. Perhaps more than any other way, this is a means for public agencies to help small business.

One businesswoman described Government information as an "invisible subsidy which can put our small businesses on an equal footing with their foreign competitors." Our country's vast network of embassies and consular offices should be employed in every way possible to obtain and disseminate information to American businesses. Too often our commercial attaches abroad are seen as out of touch with business reality or simply unwilling to make an effort to find useful answers to inquiries. The Foreign Service career track seems to prevent a commercial officer from staying in one place long enough to develop real expertise.

The types of data which could be collected in any given country include: (a) compilations of local import restrictions for all commodities; (b) lists of key local government officials who can keep shipments moving; (c) lists of reputable importing agents and distributors; and (d) data on local patterns of product consumption. Current computer technology should permit such information to be constantly updated, thoroughly cross-indexed, and easily retrieved.

We recognize that to some extent the Government is attempting to provide all of these types of information. The consensus, however, is that nothing really useful is ever produced. One export manager told us that our Government's information services "haven't been worth a nickel." He feels that unless there is a substantial increase in the quality of this service, the Government should stop trying to provide it at all and save our tax dollars.

If the Government sincerely wishes to invest in the export industry, information services will not only be provided, but they will be provided at low or no cost. Turning Commerce Department branch offices into profit centers may have an appealing sound in these days of budget austerity, but this will not encourage new companies to enter into exporting.

2. Education. Until recently, U.S. domestic markets were all that most businesses needed to succeed. Thus it is not surprising that as a nation we lack exporting skills. Instead of looking only at the short term, the Government must make a long-term commitment to exporting. This means that schools, universities, and business colleges should be encouraged and assisted in teaching exporting skills. Foreign languages and culture, currency exchange systems, and foreign market analysis are but a few subjects which must appear in our educational curricula.

3. Transportation. Exported products must move efficiently. Revitalized railroads, highways, and ports should be seen as necessary ingredients in U.S. support of exports.

4. Trade Negotiations. The Government must make concerted efforts to convince other nations to lift barriers to U.S. products.

5. Visa Approval. Foreign businessmen wishing to visit the United States to evaluate our products and negotiate deals should be given priority in visa issuance. Too often they are discouraged by unhelpful U.S. consular officials.

6. State Activity. The Federal Government should encourage recent initiatives by various states to support export activity. Where administrative or congressional approval for state-issued international trade bonds is required, it should be granted. Where possible, the Government should also cooperate with state export agencies such as the Export Assistance Center now under consideration by the Washington State Legislature.

D. A Plea For Consistency

During the past several decades the United States has used export controls as a foreign policy weapon. It is questionable whether trade embargoes and sanctions ever really yield the expected short-term gains, but even if they do, there is a serious long-term detriment from such activity. Simply put, the United States appears erratic to our trading partners. In international trade, mutually profitable relationships may take years, even decades, to build. Reliability, predictability, and consistency are vital.

Every Administration which interferes with fair trade as a demonstration of our nation's political strength in the world at large does so at the expense of our economic strength at home.

Consistent and dedicated support of our exports will give businesses -- and their lawyers too -- the ability to overcome the obstacles they now face.

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STATEMENT OF ROBERT A. BLACKSTONE

of the law firm of

DAVIS, WRIGHT, TODD, RIESE & JONES

Before the

SUBCOMMITTEE ON EXPORT PROMOTION AND MARKET DEVELOPMENT

OF THE U.S. SENATE SMALL BUSINESS COMMITTEE,

and the

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE OF THE

U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

SEATTLE, WASHINGTON

FEBRUARY 11, 1983

Mr. Chairman, it is a pleasure for me to be here this afternoon to share with the Committees my views on obstacles to exporting faced by small businesses. I would like to commend you, Senator Gorton, and the Committees on which you sit for holding this hearing on a topic which is both timely and of critical importance to the Northwest and the nation. We are rapidly coming to realize how interdependent our economic well-being is with that of the rest of the world. Our ability to develop and maintain export markets for U.S. products is a vital component of our future economic growth. Small businesses, the historic cornerstone of our economy, will increasingly be looking to the emerging markets beyond our boundaries. Our task must be to encourage those companies to significantly increase their exporting efforts by both providing them with incentives to do so and removing existing disincentives.

I am a partner in the Seattle-based law firm of Davis, Wright, Todd, Riese & Jones, and for the past year and a half have been the partner in charge of the firm's Washington, D.C. office. During this time I have had an opportunity to observe first-hand some of the many barriers to exporting faced by our clients, most of whom are small and medium-sized companies located in the Northwest. I have been particularly involved with the difficulties faced by several of our clients engaged in the manufacture of "high tech" equipment in attempting to navigate their way through the maze of U.S. export regulation. I would like to address most of my testimony this afternoon to that issue, which is particularly timely in that the basic statute which governs this area, the Export Administration Act of 1979, expires in September of this year.

The survey taken by the Senate Small Business Committee last year on obstacles to exporting faced by small businesses revealed that after "lack of information", the next most frequently identified obstacle was regulation. The survey shows that small businesses interested in exporting are deterred by the complex and confusing nature of the export regulations, and the cost, time, and paperwork involved in attempting to understand and comply with them. In my experience, these problems are not unique to small business, but are also shared by medium-sized and larger enterprises which in general are much better equipped to deal with them. Even these companies are often stymied and frustrated by the present approach to export regulation.

I will not recite for you some of the horror stories I have observed. I suspect that you have already heard a number here this afternoon. Rather, I would like to focus on some of the broader aspects of U.S. export regulation which need to be addressed if our exporters, large and small, are to remain competitive in world markets. There are five basic changes I believe we need to make:

1. Focus our regulatory and enforcement efforts much more narrowly on those critical technologies in which the U.S. has a strategic lead over the Eastern Bloc, rather than diluting our efforts by attempting to regulate as many products as we currently do;
2. Place much greater emphasis on meaningful and enforceable multilateral controls rather than unilateral controls, which in most cases are ineffective in achieving the desired result and serve only to strengthen foreign competitors at the expense of U.S. industry;
3. Streamline the licensing process so as to reduce the time lag required to obtain both licenses and reliable information about whether a license is required, and make licensing information and assistance more accessible to small businesses;
4. Require that the agencies administering export regulations develop a meaningful capability to assess foreign availability of products for which U.S. licenses are required, and apply that information so as to not place U.S. companies under unnecessary and ineffective licensing restrictions;

5. Severely restrict the circumstances under which foreign policy export controls, particularly unilateral controls, may be imposed.

FOCUS REGULATION AND ENFORCEMENT ON CRITICAL TECHNOLOGIES

Let me elaborate on these five concepts a little more. With respect to the first, the need to focus our regulatory and enforcement efforts, our objective of preventing the Soviet Union and other Eastern Bloc countries from acquiring our critical technologies is not well served by our present shotgun approach. We attempt to regulate far too many products. As a result of trying to do too much, we actually end up exercising meaningful control over too few products and, I suspect, not over the most critical ones. For example, earlier this year the Commerce Department announced that it had reached a consent agreement in a case in which a Japanese company was accused of allowing the reexport, in 1976, of certain American-made products to Cuba. What were those products? Videotape recorders sold to the State Television Station in Havana. I suggest that we have far more important technologies to direct our enforcement efforts toward than videotape recorders going to Cuba.

A related problem in this area is that the Commodity Control List (CCL), which describes the commodities for which export licenses are required, is often outdated and includes products or technologies which are in no way "state of the art" or unique to the United States. An engineer at one of our clients (and it takes an engineer to understand the CCL) once told me that in the electronics portion of the List, the performance parameters are so outdated that virtually every microprocessor now being made exceeds the specifications for which validated licenses are required. Part of the reason for this problem is undoubtedly attributable to inertia and the difficulty in getting products removed from the CCL once they are put on, and part is attributable to the complete lack of attention by the Commerce Department to the foreign availability criterion which the Export Administration Act requires be considered before a license can be required.

Because we attempt to regulate such a broad range of goods, we diffuse our enforcement resources and overload the licensing bureaucracy, thus distracting them from focusing on truly critical technologies. What we do accomplish, however, is to impose significant burdens on U.S. exporters of non-critical products. This places them at a very real competitive disadvantage relative to their foreign competitors, who are not subject to anywhere near the same breadth and complexity of export regulation, even for those products which are supposedly multilaterally controlled.

What can be done? First, require the Department of Commerce and the Department of Defense to completely review the present CCL, starting from a "zero base", and include on the revised List only those items which are truly of current strategic importance to the United States and which are not, in fact, available from foreign sources. Mandate that such review include meaningful input from the industries affected. Given the present pace of technological advancement, require that the List be reviewed at least semi-annually if not quarterly, rather than annually as under present law.

I am confident that virtually all responsible U.S. exporters endorse the goal of preventing the transfer of militarily significant technology to the Soviet Union, the primary purpose of national security export controls, and would wholeheartedly support a regulatory and enforcement approach which is reasonably designed to accomplish that objective. We do not now have such an approach. By targeting our efforts more precisely, we can both more effectively control those products and technologies we should be most concerned about and at the same time reduce unnecessary burdens on U.S. exporters.

PLACE MORE EMPHASIS ON MEANINGFUL MULTILATERAL CONTROLS

We must recognize that the United States can no longer attempt to impose its conception of export controls unilaterally with any realistic hope that they will be successful. Only through meaningful multilateral controls, uniformly enforced, can we achieve our objective of preventing or at least significantly delaying, Soviet acquisition of our critical technologies. Except with respect to those products or processes which are unique to the United States, the most frequent result of unilateral export controls is that U.S. companies lose business to their overseas competition and the Soviet Union gets the desired equipment. That result makes very little sense.

Historically the U.S. has attempted to exercise mutilateral controls through a vehicle known as COCOM, a coordinating committee with representatives from the NATO nations (except Iceland) plus Japan. COCOM maintains a list of items which by agreement cannot be exported to Communist countries. Exceptions must be approved by all parties. COCOM is an informal mechanism, not based on treaty or other formal agreement, and lacks enforcement powers. The basic problem with COCOM is that the other members, for a variety of historic, political and economic reasons, have a very different conception of the purpose and importance of COCOM than we do. While we adhere strictly to the COCOM embargo list and enforce it vigorously, especially since the advent of Operation Exodus, our allies take a much more relaxed view, often depending on the needs of their economy. I have been told by more than one businessman that they strongly suspect that their foreign competition, working through their governments, has arranged to have products added to the COCOM list, knowing that the U.S. will strictly enforce it thus hamstringing competitive U.S. companies, while their government will look the other way.

We must stop deluding ourselves that the United States can control the flow of technology to the Eastern bloc by itself. We must realize that meaningful control can only be achieved if we can convince our allies of the importance of control. This means again focusing on the technologies truly critical to our security and reducing the scope of the COCOM list accordingly. It means concerted efforts to elevate COCOM to treaty status and the inclusion of an enforcement mechanism to insure that those items which are still on the COCOM list are in fact uniformly controlled by all members.

A related issue that is a particularly sore subject with a number of U.S. exporters is the great disparity in processing time for export licenses between the U.S. and other COCOM members. More than one sale has been lost by Northwest companies because their foreign competition was able to obtain an export license much more quickly (if they had to obtain one at all). While some exporters have long lead times in which to obtain validated licenses, many others operate on a much shorter time-frame and have customers who expect prompt shipment from inventory. If the U.S. supplier cannot ship because he is waiting for an export license, he risks losing not only that sale but future sales and customer goodwill carefully developed over a long period of time. Our technological advantage is no longer so great that our foreign customers will ignore delivery delays just to obtain the U.S. product. This is another reason we need to make the licensing process much more efficient.

STREAMLINE THE LICENSING PROCESS

The operation of our existing export licensing process is a source of great frustration to the exporting community and in my opinion, a significant impediment to the expansion of U.S. exports, particularly by small businesses and those in the high technology area. Although the process has always been cumbersome, the problem became much more acute with the institution of Operation Exodus by the U.S. Customs Service in the fall of 1981. The result of Operation Exodus, which significantly increased export regulation enforcement efforts at a number of ports around the country, has been a substantial increase in the workload of the Office of Export Administration that it simply was not equipped to handle. Until the last month or so, the Office attempted to keep track of license applications manually as they went through the review process. This made it almost impossible for an exporter to determine the status of an export license application while it was under review. I understand that a new computerized tracking system has just been installed, and am hopeful it will improve things somewhat.

Another problem with the current situation is the length of time it takes to obtain an advisory opinion from the Department as to whether a given product requires a validated license, and if so, what CCL category it belongs in. This problem is particularly acute for small businesses. Anyone who has ever attempted to work with the CCL knows what a frustrating experience it can be. It is a complicated, highly technical document with more than its share of exceptions, footnotes, and interpretations that often make its application to a particular product exceedingly difficult. To its credit, the Commerce Department has recently proposed a revised format for the CCL, which if adopted will make the document somewhat easier to use. The proposed changes do not, however, make much change in the technical standards which are the heart of the CCL and the primary source of confusion.

Because of the difficulty in using the CCL, exporters often cannot easily determine if their products require a validated license. Because the same licensing officers in Washington, D.C. who process license applications also process requests for advsory opinions, advisory requests are put on the back burner. One of our clients has had a request for an advisory opinion at the Commerce Department for more than six months with no action. Exporters are very wary of relying on oral advice as to whether a license is required given the present enforcement climate. As a consequence, prudent exporters who want to avoid the risk of having their products detained or seized by Customs will obtain validated export licenses for their products they are unsure about, thus further overloading the licensing system. If the Commerce Department paid more attention to advisory opinion requests, I strongly suspect they would have substantially fewer license applications.

While there is no doubt that the Commerce Department has recently taken some steps to streamline the licensing process, there is still significant room for improvement. I urge that the following actions be considered in connection with reauthorization of the Export Administration Act:

1. Legislatively mandate that the Department respond to requests for advisory opinions within 30 days, or 60 days for truly exceptional cases;
2. Amend the legislation to reduce the current statutory processing time for validated license applications by at least one-third;
3. Decentralize processing of validated license applications for "free world" destinations to Commerce district offices, where Commerce employees can more easily communicate with exporters and better understand their product line; and,
4. Establish a toll-free telephone number for exporters to use to obtain answers to general licensing issues (and have it staffed such that West Coast exporters can utilize it during their normal business day).

Another step which should be taken to streamline the licensing process and to focus our export regulation efforts more effectively would be to eliminate the validated license requirement for goods being shipped to the COCOM countries, Australia and New Zealand, which will be used in those countries and not reexported. Presently only shipments to Canada are largely free from validated license requirements. The President's Export Council has consistently recommended that this step be taken, based in part on a study conducted in 1980 which found that in 1979, the Office of Export Administration processed a total of 72,287 license applications, of which some 22,377, or 31%, were for the COCOM countries, Australia, and New Zealand. The study found that not one of those applications was denied! This step alone would do much to alleviate the present overloaded license processing procedure. Given the Department of Commerce's apparent reluctance to adopt this measure administratively, I suggest that the Congress do so by legislation, or at the very least, that it direct the Department to report back within six months as to why the treatment presently accorded Canada should not be extended to our other allies.

REQUIRE MEANINGFUL ASSESSMENT OF FOREIGN AVAILABILITY

The Export Administration Act of 1979 directed the Department of Commerce to develop a capability to assess foreign availabilty of goods for which the U.S. requires validated licenses, and specifically earmarked $1.25 million dollars for that purpose. Section 5(f) of the Act clearly requires that if goods are available from foreign sources such that the requirement of a validated license would be ineffective in achieving our policy objectives, a validated license may not be required unless the President specifically determines that export controls must be maintained, notwithstanding foreign availability. Despite this mandate, the concept of foreign availability as a limitation on export licensing continues to be a hollow shell, much to the detriment of U.S. exporters.

I understand that the Department of Commerce has recently begun to take some very limited action, primarily more studies, in the area of foreign availability. I would urge that the Congress require the Department to report back, perhaps on a quarterly basis, on its progress in developing a meaningful foreign assessment program. This is particularly important for small businesses whose products are presently subject to validated license requirements in that they are not likely to have the resources to be able to to obtain information about foreign availability themselves.

Another aspect of the present foreign availability portion of the Act which should be changed is section 5(f)(4) which states that the representations of applicants as to foreign availability are insufficient evidence. I would suggest that the statute be amended to provide that such representations should be sufficient unless contradicted by reliable information. In many cases, particularly for larger exporters, the applicant is likely to be the party with the most reliable evidence of foreign availability because he will have some knowledge of his competition.

Foreign availability must be made a cornerstone of our export regulatory scheme. If, as I and a number of exporters I have spoken with believe, many of the products which the U.S. presently carefully controls are readily available to the Soviet Union from other sources, all we are doing by requiring validated licenses is shooting ourselves in the foot economically without achieving our desired objectives. In the long run, that kind of ineffective restriction on our ability to export will do us far more harm.

RESTRICT FOREIGN POLICY EXPORT CONTROLS

While few would disagree with the need for some form of export controls for national security purposes, the use of export controls for foreign policy purposes raises a very different set of issues which should be addressed in amendments to the Export Administration Act. The primary problem again is that foreign policy controls have been unilaterally imposed by the United States and not as part of a multilateral effort. There is a very real question whether they have ever been effective in achieving the objectives for which they were instituted. We are alone in the free world in the extent to which we attempt to use restictions on the export of our products for foreign policy purposes. Not only do our allies refuse to cooperate with our foreign policy controls, but on numerous occasions have used them as an opportunity to expand their own export activities to the detriment of U.S. agriculture and industry.

Certainly there are occasions, such as in times of war or national emergency, where there are no alternatives to the use of economic sanctions to effectuate foreign policy. The President's ability to impose export controls in those instances should not be restricted. In the recent past, however, export controls have been instituted in circumstances far less compelling, such as the Soviet crackdown on dissidents or its activities in Africa. While those are important issues, it is questionable whether halting the sale of oil production technology, for example, will force the Soviet Union to make a fundamental change in its policies. Stopping certain exports may have a symbolic value, but it also has a very real economic impact on this country as the employees of the Caterpillar Tractor Company found out last year.

What is most aggravating for business in the imposition of foreign policy controls is the lack of predictability in their application. What is predictable is the disruption they cause to the development of stable, long term trade relationships. The uncertainty resulting from the possibility that foreign policy export controls may be imposed adds one more unknown factor that can only inhibit potential U.S. exporters, large and small.

The foreign policy control section of the Act should be amended to provide that existing contracts in force at the time export controls are imposed may be fulfilled. The 97th Congress passed such a provision for agricultural products (although limited to a specific period of time). That principle should be extended to all types of exports. The United States cannot afford to develop a reputation as an unreliable supplier. In addition, the Act should be amended to require that prior to the adoption of foreign policy export controls, the executive branch must determine, and not just consider, the six criteria now set out in the statute, and at least report to Congress the determinations made.

UNITED STATES SENATE
SELECT COMMITTEE ON SMALL BUSINESS
HEARING FRIDAY, FEBRUARY 11, 1983

New Federal Building 195 2nd Ave. Seattle, WA 98174

STATEMENT BY:

ROBERT MACDONALD, PRESIDENT, ALF. CHRISTIANSON SEED CO.

BEFORE SUBCOMMITTEE ON EXPORT PROMOTION AND MARKET DEVELOPMENT AND THE SENATE COMMERCE AND TRANSPORTATION'S SUBCOMMITTEE ON SCIENCE
SENATE SMALL BUSINESS COMMITTEE
February 11, 1983

TESTIMONY

My name is Robert MacDonald

I am President of Alf. Christianson Seed Co., with headquarters in Mount Vernon, Washington, My business and working career with that company extends one year less than one half century. I have been President of that comapny since its incorporation Twenty Five years ago. My company by most standards would qualify as a small business, we however, reserve to ourselves a stature of importance inasmuch as we, as a vegetable seed grower, are providing for mankinds basic needs -- vegetables and we are of some consequence internationally in the vegetable seed trade.

In order of importance within our experience we would categorize obstacles to exporting as follows:

1. Capital - that is working capital requirements.

2. Foreign exchange rates disparities.

3. Overt or covert restrictive import practices on the part of some of the countries that we sell to.

I shall deal with my number one category first - Capital - that is working capital requirements.

During my almost one half century of commercial vegetable seed growing, I have lived through sustained periods of toil, sweat and fear - fear of the possibility of tomorrows or next years insolvency - that is not to say I have not smelled the flowers or vegetable seeds along the way nor have not managed some fun enroute.

The need - requirement of adequate working capital was my everpresent concern. Attributable to our substantial progress of more recent years in worldwide marketing has been the tax deferred provisions of the Internal Revenue since its enactment in 1971.

Unfortunately subsequent diminutions in the tax deferment considerations for DISC (Domestic International Sales Corporations) earnings in international trade have substantially reduced the benefits formerly derived from DISC enactments.

Funds accrued from DISC tax deferments have been of considerable benefit in Research and Development, in meeting added costs pertaining to aggressive export sales marketing and in general providing for needed working capital.

I would strongly urge the government of the United States to add to rather than take away from the tax deferred benefits extended to DISC corporations.

Remember we are talking about tax deferral in this sense, not of tax reduction or of tax forgiveness, it is in effect the equity stake of the United States Government in the furtherance of trade abroad.

We will now direct our attention to the second of our major obstacles to export marketing - Foreign exchange rate disparities.

Forming part of this report and to be incorporated herein is a copy of my talk to the Western Washington Horticultural Association at their annual meeting in Olympia, Washington January 6, 1981 wherein I detailed certain national currencies declines in relation to the U.S. Dollar.

HIGH INTEREST RATES DOLLAR VALUES AND THE WORLD MARKET

Bob McDonald, Alf Christiansen Seed
Mt. Vernon, WA

The devastating effect of recent escallations, fluctuations and gyrations in interest rates over the past particularly two years reaches all of us.

If you are a borrower — it is a famine — a drought —

If you a lender — it is a harvest — a bonanza
in one way or another — maybe sometimes a plus factor tending to minimize or to offset a minus factor — we are all affected.

The prime rate in 1980, for instance, from a high of 20 percent in April fell to 11 percent in July — then zoomed to 21 percent by the end of the year —

That Is Chaos

The prime in 1981 did go over the 1980 high and the fluctuations through the year to date were not so violent — as of December 18, 1981 the prime was quoted at 15½ percent.
Using the prime as a yardstick and correlating; *Mortgage Interest, Consumer Conditional, Sales Interest, Short Term bank borrowing Interest, etc., etc.* The cost burden and the inability to make effective long range plans have resulted in rising bankruptcies of corporations, small businesses and of individuals.

"The other side of the coin" of course is high interest earnings on invested funds in; *Money Market Certificates, Money Market Funds, Certificates of Deposit, Government Securities, etc., etc.* The outflow of funds to which has had an extremely adverse effect upon savings institutions.

These circumstances and fluctuations in money costs of recent and present experience point to the necessity for remedial action.

It is incumbent on a capitalistic society, from both a domestic and international standpoint, to protect the integrity of its monetary standard.

In these days of political unrest and fiscal uncertainties the matter of foreign currency values in relation to the United States dollar is of extreme importance.

Changes in values of international currencies are truly of concern to me inasmuch as the greater part of our business — as much as 70 75 percent is in foreign commerce.

Regardless of the fact that all of our quotations and invoice pricings are in U.S. dollars, in some instances in irrevocable letters of credit in U.S. banks and the fact that thereby we do not sustain currency losses or gains, the ability of a foreign buyer to place his order for our goods, vegetable seeds or any other commodity, with a U.S. supplier for payment in U.S. dollars is considerably constrained when his national currency is at a discount with that of the United States.

The foreign buyer has no desire to sacrifice his currency, if he can buy elsewhere from currencies at a comparative level with his own.

The European Economic Community is an example of comparative currencies.

We have tracked relative foreign currencies over the past few years particularly those with whom we do business; over the period from December 31, 1979 to our last figures as of December 22, 1981 we have the following comparatives:

	From	To	To U.S. $	%
Japan	240.4	219.1	Yen-Gain	089
Denmark	5.35	7.38	Krone-Loss	.379
Netherlands	1.90	2.48	Guilder-Loss	.305
France	4.02	5.76	Franc-Loss	.433
Britain	.45	.53	Pound-Loss	.178
Mexico (7-81)	22.8	26.14	Peso-Loss	.146
Gold	533.00	403.70	Ounce-Loss	.243

per abridged summary as follows:

Foreign Exchange
Per U.S. Dollar

	Japan	Denmark	Netherlands	France	Brittain	Mexico	
	Yen	Krone	Guilder	Franc	Pound	Peso	Gold
1979							
Dec. 31	240.4	5.35	1.90	4.02	.45		533.00
1980							
July 1	219.5	5.46	1.93	4.08	.42	22.80	660.00
Dec 30	202.8	5.99	2.13	4.52	.42	23.15	568.50
1981							
June 3	226.9	7.51	2.65	5.72	52	24.45	423.50
Dec 22	219.1	7.38	2.48	5.76	53	26.14	403.70
% Gain Or Loss Per U.S. $	089	379	.305	.433	.178	.146	243

To the extent that a foreign buyers currency has lost ground to the United States dollar in the percentages indicated,

France	.433
Denmark	.379
Netherlands	.305
Britain	.178
Mexico	.146

and compels a buyer to look for a better deal elsewhere — we have been substantially affected by these disparities.

Look at those percentages again—

France has lost almost half of its purchasing power against the United States dollar
Denmark has lost over one third — others have relatively high losses

Comparative international currencies relationships are the distillations of international relationships expressed in currencies —

peace, war, politics — economics
harvest, famine

All have their place in the comparisons. High interest rates in the United States have been referred to in the more recent comparatives as a causative factor in the disparities.

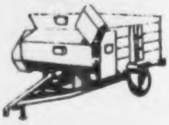
Equilibrium in currency relations among trading parties or trading partners should be considered a reasonable objective for men of goodwill.

Trade deficits and balances of payments between ourselves and our international friends and allies amounting to billions of dollars annually must be corrected if we are to regain reasonable comparisons in foreign exchange currencies.

A very solid case can be made for the return to, or the establishment of an international gold standard. The United States dollar and the currencies of many other countries are recognized only by name, they are not measures of an internationally accepted intrinsic worth.

For as long as gold supported the currencies of trading nations its strength supported the consummation of international transactions.

President Regan's commitment to a balanced budget and to domestic fiscal responsibility could be considered a leading factor toward financial stability between nations leading thereby to broader fields of international accord, we should endeavor to hasten that day.



The disparities at that time from the comparative figures of December 31, 1979 and December 22, 1981 have further declined as of January 25, 1983 as herein detailed

		12/22/81 %		1/25/83 %
Japan	Gain	8.9	Loss	7.6
Denmark	Loss	37.9	Loss	13.5
Netherlands	Loss	30.5	Loss	6.6
France	Loss	43.3	Loss	16.1
Britain	Loss	17.8	Loss	18.7
Mexico	Loss	14.6	Loss	82.4

In the case of Mexico approximately 85% of the value of their currency in relation to the U.S. Dollar has been wiped out since December of 1979.

It is apparent normal commercial relationships between debtor and creditor nations can not endure with currencies at such disparities.

I will now address my third category of obstacles requiring remedy to a greater or lesser degree, namely restrictive practices overt or covert on the part of our trading partners.

We had a problem with one of our good trading partners - Japan - whereby over restrictive quality standards relating to some of our crops threatened our continuing doing business under those standards.

We met that problem in collaboration with Washington State University and their Senior Pathologist Dr. Richard Gabrielson by traveling to Japan and tackling this problem at its source.

By the coordinated efforts of our Japanese trade, Washington State University, The American Seed Trade Association, The Oregon Seed Trade Associaton, and ourselves, partially eliminating this problem with the Japanese authorities. Canada, South Africa, and Australia also have weed or phytosanitary restrictions that are unduly restrictive. It is our understanding that these restrictions are part of their seed laws and that it takes legislative action to change them. We are aware of the restrictions and have been able to ship into these areas successfully.

Before I conclude my remarks and ask for your questions I would like to take a bow on behalf of my company, its employees and all of those who provided the effort resulting in our being given

"THE PRESIDENT'S "E" AWARD"

in the words of Mr. Malcolm Baldridge, Secretary of Commerce

> "in recognition of outstanding contributions to
> the increase of trade abroad."

Thank you.

Senator **Gorton**. Now we did announce that we would allow brief statements by people who are not specifically on the program. We have one signup, Mr. Kezner.

If he will come up to the podium over here, we will hear from him.

If there is anyone else who wishes to speak, if you will come up here to this entrance and sign up, we will be delighted to hear from you as well.

Please state your full name and your company's name for the record.

STATEMENT OF LARRY KEZNER, R. F. POWER LABS

Mr. **Kezner**. My name is Larry Kezner. I work for a company called R. F. Power Labs. We are located in Woodenville, Wash. We are a small electronics company. We manufacture relatively sophisticated laboratory-grade RF amplifiers. We also manufacture amateur radio amplifiers and communications-related products, satellite-uplink equipment, marine amplifiers, basically that type of equipment.

About half of our sales are related to exports.

In comment here, just as a brief synopsis, I do not believe that the Export Administration Act can be repaired or refined. I think it needs a significant overhaul.

Inasmuch as so few licenses have ever been rejected—nobody here can say that they ever heard of one—it has only caused delay, financial delay.

If there has to be any kind of control at all, it should be on the basis of a preapproval where you select the equipment or products of your market efforts, that you are going to try to sell these products in every country in the world. Then you can get your approval. You can be free to sell this product, and sell it repeatedly without having to repeatedly reapply.

That is basically it. Thank you.

Senator **Gorton**. Thank you very much, Mr. Kezner.

We do have one other signup, Mr. Burns from the Whatcom Chamber of Commerce.

Mr. Burns?

Please give us your full name.

STATEMENT OF JERRY BURNS, DIRECTOR, BUSINESS INFORMATION CENTER, WHATCOM CHAMBER OF COMMERCE AND INDUSTRY

Mr. **Burns**. Thank you, Senator.

I am Jerry Burns, the director of the Business Information Center for the Whatcom Chamber of Commerce and Industry.

In addition to chamber employee, I am also a Small Business Administration counselor and a liaison officer of the Department of Commerce, both volunteer positions.

Much of what I would have said has already been covered today, but I do have one tangible suggestion that I think it might be worthy to consider, particularly in the area of lack of information.

The kinds of exporters that I am working with are would-be exporters or very, very small, young exporters. We try to motivate them and then give them a hand with it.

The lack of information on our level is really very dramatic. It is an irony that while various agencies may design programs with benefits to the business community, there is never a budget for marketing them. Thus, the program may, and quite often does, lay on the shelf for years until somebody comes along and finds it.

One suggestion that I would make is that a number of programs, particularly certain of those of the International Trade Administration, ought to be used as promotional tools in stimulating export development. I am speaking of such as the trade opportunities programs, the world trade or data reports, tailored export marketing plans, and the agent distributor service. There are others.

Much information exists, but the cost is frequently prohibitive to the would-be exporter. Again, I would suggest that the information be used in detail as a promotional tool. Perhaps costs could be recovered after the consummation of a successful export deal based on a percentage of net profit or something.

That is really the point I want to make. If we can get the information that exists, not stuff that we have to buy, that we have to incur a debit to create, just use the information that we have, then we in Whatcom County I know can get more people directly involved in exporting, but they cannot take sometimes thousands of dollars to develop a marketing plan on the premise that a market may exist.

If we really want to get some of these small people in it, let's use what we have and then, if somebody actually does succeed in getting all the way through it, take a percentage of it or something.

Thank you.

Senator GORTON. Mr. Wambolt, from whom we heard earlier but who has another point to make.

STATEMENT OF RONALD WAMBOLT, DIRECTOR OF INTERNATIONAL OPERATIONS, JOHN FLUKE MANUFACTURING CO., INC.

Mr. WAMBOLT. Senator, I will not take up very much of everybody's time here on a Friday afternoon, but I do want to urge you to use your office to the extent possible to help improve our trade relationship with the People's Republic of China.

As Mr. MacDonald said earlier, doing business today with most of the countries in Latin America is extremely difficult because of their economic problems. Our business in that part of the world is less than one-third of what it has been historically. Therefore, wanting to continue to be a fast-growing company, which we need to be in our industry, we look for other markets around the world, and one on which we have focused a lot of our resources is the People's Republic of China, only to be hindered by our own Government.

Counselor Gee of the Embassy of the People's Republic of China in Washington addressed the Washington State-China Relations Council at their annual dinner meeting the week before last. He listed a number of items that are causing a problem for his country in doing business with China. I am certain that if those items were at least improved, it would enhance our opportunities there.

Among the things he listed was the inability for U.S. companies to get export licenses to get our technology. Our technology is badly needed by the Chinese if they are to meet their growth expectations. They expect to grow by the end of this century at a greater rate than both Japan and Germany did during the sixties.

When he was questioned about how feasible that was, his answer was, "Well, if the Germans and Japanese can do it, certainly the Chinese can." However, they can only do it with the help of the United States.

If we can get our export licensing procedures at least in line with what other companies experience, particularly in Japan and the United Kingdom, it will be very helpful to us.

Another area he addressed was narrowing the balance-of-trade disparity between the United States and China. In 1982, China did have a very positive balance of trade but it was severely negative with the United States. One of the primary reasons for it was the quota that had been placed on the export of Chinese textiles into the United States.

Obviously, if we buy more from the Chinese, then they are going to buy more of our products, and we badly need that business these days.

As Mr. MacDonald also said, the high value of the U.S. dollar has caused U.S. products to increase substantially, which has severely reduced our business in our traditional markets. That business is available in China. There is no doubt about it.

In a couple weeks I am leaving for China, my seventh trip in the past 2 years, but it is darned frustrating to spend time traveling around that country finding business and then not being able to get a license for it.

The final thing that I believe Mr. Gee mentioned, aside from improving the balance of trade and giving more of our technology, was an item I do not remember. However, I would urge you to get a copy of his speech. Governor Spellman was at that dinner and is getting a copy.

Senator GORTON. Let me ask you one more question with respect to your company.

Can you successfully do business both in the People's Republic of China and in Taiwan?

Mr. WAMBOLT. Absolutely. In fact, in a couple trips I have gone from one country to the other, and any goods I was carrying from China they did not want in Taiwan, they seized and held until I left. We have no problem in doing that. We do business in both countries.

Senator GORTON. Thank you very, very much.

Mr. WAMBOLT. Thank you.

Senator GORTON. Mr. Betts?

STATEMENT OF GERALD E. BETTS, MARKETING MANAGER, ELDEC CORP.

Mr. BETTS. I am Jerry Betts, the marketing manager at the Eldec Corp.

I would like to expand on a point that Mr. Gellert made earlier. We believe we have a positive suggestion for reducing the problem of getting export licenses. That simply is for those items that are of a nonmunition nature exported to the free world that the exporter be given a self-certification process.

Each exporter would establish his own policies and procedures which would be approved by some relevant Government agency. This is very similar to the process we now go through in obtaining and maintaining classified materials. It is very similar to the process we go through when we build goods under Government contract and have a Government inspector in our plant visit us. We establish a set of quality standards to which a Government agency audits and inspects our process.

Why can't we use this established procedure for handling classified material for building material, the same material we are trying to export, to license the export of these products? It seems like a good process. It seems like we have a lot of experience in it, and it is working very well.

I think we could serve the need of national security, and I am certain we could reduce the paperwork and the expense of doing so.

Thank you.

Senator GORTON. Thank you very much, Mr. Betts.

With that, I would once again like to thank both the formal panelists and those who have come up and offered their ideas as well.

I now declare this meeting to be adjourned.

Thank you all for coming.

[Whereupon, at 3:55 p.m., the hearing adjourned.]

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